

APPEARANCES

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INDEX

	page/line
DIRECT EXAMINATION BY MR. CASTRO	5-4
CROSS-EXAMINATION BY MR. KROLL	100-16
REDIRECT EXAMINATION BY MR. CASTRO	188-15
RE-CROSS-EXAMINATION BY MR. KROLL	237-4
CROSS-EXAMINATION BY MR. HANOR	239-15
FURTHER RE-CROSS-EXAMINATION BY MR. KROLL	202-16
RE-CROSS-EXAMINATION BY MR. HANOR	202-24

EXHIBITS

Plaintiffs' Exhibit 1	
Notice to take deposition & subpoena	6-3
Plaintiffs' Exhibit 2	
Objection to notice	6-3
Plaintiffs' Exhibit 3	
Business records	29-3
Plaintiffs' Exhibit	
Cooking trial data	50-12
Plaintiffs' Exhibit 5	
Order confirmation	52-22
Plaintiffs' Exhibit 6	
1/17/97 letter	118-5
Plaintiffs' Exhibit 7	
7/8/00 letter	118-20
(sic) typed as spoken	
(ph) phonetic spelling	

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between counsel for all parties that this deposition may be taken by steno-mask type recording by PATRICIA L. SNIDER, a Free-Lance Court Reporter, and afterwards reduced into typewriting.

It is further stipulated and agreed by and between counsel for the respective parties that presentment of this deposition to the witness is hereby waived.

It is further stipulated and agreed by and between counsel for the respective parties that any and all objections may be made at the time of trial, except as to the form of the questions.

It is further stipulated and agreed between counsel for the respective parties hereto that the deposition of the witness may be signed before a Notary Public other than the Notary before whom the deposition was taken.

- 1 MICHAEL BRIGGS
- 2 Having been first duly sworn and examined,
- 3 testified as follows:
- 4 DIRECT EXAMINATION BY MR. CASTRO:
- 5 Q. Mr. Briggs, could you state your name
- 6 for the record, please?
- 7 A. Mike Briggs.
- 8 Q. And that's your complete name?
- 9 A. Michael Edward Briggs.
- 10 Q. And could you give us your residential
- 11 address?
- 12 A. 1937 Tanglewood, Nixa, Missouri.
- 13 Q. Today you're here pursuant to a
- 14 subpoena that was issued upon the
- 15 company, is that correct?
- 16 A. Correct.
- 17 Q. And I'm going to mark that as
- 18 Plaintiff's Exhibit #1, along with the
- 19 Notice to Take Deposition that we
- 20 filed. And for the record, I'll also
- 21 mark as Plaintiffs' Exhibit #2 the
- 22 company's objection to the notices that
- 23 were served both by -- and the
- 24 subpoenas served by both our clients
- 25 and the defendant, ConAgra Refrigerated

- 1 Foods. Mr. Briggs, could you state
2 your educational background for us?
3 A. I'm from West Michigan, went to high
4 school in Middleville, Michigan, went
5 to college at Grand Valley State
6 University in Allendale, Michigan, and
7 I have a Bachelor's in accounting.
8 Q. Could you give us your date of birth,
9 please?
10 A. December 20th, 1959.
11 Q. When did you graduate with your
12 accounting degree?
13 A. 1984. I was actually working and went
14 to night school.
15 Q. Who were you working for?
16 A. Billmar Foods, which now is a division
17 of Sarah Lee group.
18 Q. When did you begin your employment with
19 Billmar Foods?
20 A. May of 1981.
21 Q. So you worked during the day and went
22 to night school?
23 A. Right.
24 Q. Okay.
25 A. Right.

- 1 Q. Could you give us, Mr. Briggs, your
2 work history with Billmar Foods? Was
3 that -- let me ask you first, was that
4 the first meat processing company you
5 went to work for?
6 A. Yeah. I was still in college. I still
7 had probably a half a year to go. And
8 I worked out, actually out on the kill
9 line.
10 Q. All right.
11 A. And then my degree was in accounting,
12 then I basically became a cost
13 accountant, did that for three years,
14 in 1984 they had a fire and I almost
15 left the company and went to the
16 president and he put me into marketing,
17 a marketing service deli basically,
18 because they didn't have any, so I did
19 deli marketing for a number of years
20 and basically grew that business to the
21 point where we started our own sales
22 force. I became the national sales
23 manager for that particular -- that
24 particular side of the business,
25 actually came up with the idea to do

- 1 Sarah Lee deli meats, which was -- then
2 became the national sales manager, and
3 in 1993 I came here.
4 Q. Let me back up a little bit. You
5 worked at Billmar Foods, and at that
6 time it was known as Billmar Foods.
7 When did it become known as Sarah Lee?
8 A. I think it was 1987.
9 Q. Was it acquired by Sarah Lee?
10 A. Right, it was acquired by Sarah Lee.
11 Q. And you worked continuously from, oh,
12 1981 through 1984 upon graduation --
13 A. Right.
14 Q. -- for Billmar Foods?
15 A. Right.
16 Q. Upon graduation what job did you first
17 take? Was it cost accounting, you were
18 a cost accountant?
19 A. I did not have my degree yet.
20 Q. Okay.
21 A. But they put me -- you know, I went to
22 them and said, you know, "I'm here on
23 the kill line. I'm about four classes
24 from getting my degree, you know,
25 there's something I can do besides, you

- 1 know, being an eviscerator," so they
2 said, you know, "We'll let you
3 interview." I think at the point in
4 time I interviewed for like a material
5 management or, you know, inventory
6 management position, but, you know,
7 being a college student that they
8 didn't know I didn't think they wanted
9 me managing their inventories.
10 Q. When you graduated what was the first
11 permanent job you had with them?
12 A. When I got my degree they put me into
13 cost accounting.
14 Q. Okay.
15 A. And so I was already a cost accountant,
16 and by that time, by the time I got my
17 degree, you know, I was doing financial
18 analysis for the president and, you
19 know, working up costs. I was kind of
20 the, you know, person that worked up
21 all the numbers for them.
22 Q. Okay.
23 A. And so when the fire came, you know, it
24 was like, well, I don't really want to
25 leave these guys, but I'm an accountant

1 and I don't have anything to count
2 because everyone was, you know,
3 basically building the plant back,
4 trying to save the business, because it
5 was a pretty devastating fire. And so
6 I said, "I want to help, I want to do
7 more, or I need to go do something
8 because, you know, I'm antsy here."

9 Q. Okay.

10 A. And they said, "Well, why don't you go
11 into marketing and sales and, you know,
12 put together a program to go sell our
13 deli products?"

14 Q. Okay.

15 A. It was a market that they really
16 weren't in. They were really a food
17 service company, so basically that's
18 what I did, and basically from 1984 to
19 1993 took a business that was virtually
20 zero in sales to over 100 million in
21 sales.

22 Q. And when you left that company you were
23 the national sales manager for Sarah
24 Lee?

25 A. Sarah Lee Service Deli.

1 Q. What type of products were you
2 responsible for marketing as national
3 sales manager for the service deli side
4 of the company?

5 A. Primarily turkey, but also beef and
6 pork. You know, all three, all
7 species, but primarily turkey.

8 Q. Okay, when you say "service deli" would
9 that include supermarkets plus food
10 service industries such as airlines?
11 Or explain that to us, if you would.

12 A. Okay. It's primarily in-store
13 supermarket delis.

14 Q. The type you could walk up to the
15 counter and --

16 A. Right.

17 Q. -- buy the product?

18 A. In retail establishments.

19 Q. Okay. Were you familiar with how that
20 product that you marketed, how it was
21 prepared, how it was processed, so to
22 speak?

23 A. Intimately.

24 Q. Okay.

25 A. As a cost accountant my job my first

1 three years was to go out and define
2 process and break it down into how much
3 it costs, so if it was to chop
4 something I would know how much -- and
5 then to go through each one of the
6 things. I'm intimately aware of
7 process. Not from an engineering
8 standpoint, but from a cost standpoint.

9 Q. Right. At the time you left Sarah Lee
10 how, if you know, how was Sarah Lee
11 processing its smoked products or
12 browned products, browned turkey
13 products?

14 A. There were several ways that they were
15 processed. One, they did a -- just a
16 regular smoke in the smokehouse with
17 one cycle, you know, where it was
18 cooked and smoked all in the same
19 cycle. There was the two-part cycle of
20 cooking and then taking it out of the
21 bag and putting it back into the
22 smokehouse to applicate the smoke. And
23 then they also had a continuous oven
24 that impinged brown, not by adding a --
25 not by adding anything, but just by

1 forced hot air basically roasting the
2 product. It would be cooked in a bag,
3 stripped out, put into a continuous
4 oven, and that basically roasted the
5 product.

6 Q. How long was that process?

7 A. How long was it?

8 Q. Yes.

9 A. We built the oven in 1986. I think it
10 was in 1986 or '87 in which we made
11 our first product. Yeah, it was right
12 in that time period.

13 Q. I then take it you were hired by --
14 was it Hudson Foods at the time? Was
15 that the name of the company in 1993?

16 A. Right.

17 Q. What were you hired as, hired on as
18 when you came to work for Hudson Foods?

19 A. I was hired as the general manager of
20 the turkey division.

21 Q. What were your principal
22 responsibilities as the general manager
23 for the turkey division?

24 A. Live operations, manufacturing, and
25 sales and marketing. So basically

- 1 every facet of the complex.
 2 Q. Manufacturing would include processing,
 3 meat processing?
 4 A. Right. Right.
 5 Q. Generally, how big was Hudson Foods
 6 when you came on as general manager in
 7 1993?
 8 A. The entire company or just what I was
 9 responsible for?
 10 Q. First what you were responsible for.
 11 A. I think that we were approximately 150
 12 million in sales here.
 13 Q. What type of products did you sell or
 14 were you responsible for within that
 15 division?
 16 A. All the products that were produced
 17 here in this facility and -- the
 18 Jefferson Street facility and the
 19 slaughter facility over at Main Street.
 20 Q. Now have you named three different
 21 facilities by saying this facility, the
 22 Jefferson --
 23 A. No, two.
 24 Q. This facility, being on Jefferson
 25 Street.

- 1 A. Right.
 2 Q. I didn't know if there was another
 3 location on Jefferson.
 4 A. No. Right. Right.
 5 Q. And then one over -- where was the
 6 other one?
 7 A. Main Street, which is about a half a
 8 mile from here.
 9 Q. What was the principal product, was it
 10 turkey?
 11 A. Right.
 12 Q. And how much, percentage-wise, did
 13 turkey make up in sales versus other
 14 products?
 15 A. Ninety-nine percent.
 16 Q. What other products were there other
 17 than turkey?
 18 A. A little bit of chicken. Later we
 19 entered ham and later I became
 20 responsible for the Albert Lea, for
 21 their processing facility in Albert
 22 Lea, Minnesota.
 23 Q. What product was processed over on Main
 24 Street?
 25 A. It's a slaughter and cut-up facility

- 1 for turkey.
 2 Q. Okay.
 3 A. And it does some further processing,
 4 basic further processing; grinding,
 5 deboning, roast and tied roast, all in
 6 a raw commodity type form, as opposed
 7 to coming over here, which is in a
 8 cooked form.
 9 Q. Okay. Are you general manager today of
 10 this company, or when did your
 11 responsibilities or title change?
 12 A. In 1999 I put together or found an
 13 investor to buy the facility from Tyson
 14 Foods, who had acquired the assets from
 15 Hudson Foods in 1998. I'm the
 16 president of Willow Brook Foods, which
 17 included the original turkey business
 18 that I was responsible for, plus the
 19 Albert Lea facility in Albert Lea,
 20 Minnesota that I was also -- gained
 21 responsibility with Hudson in 1995.
 22 Q. Okay.
 23 A. And that facility is a red meat
 24 facility and a chicken facility. It
 25 does all further processing. It does

- 1 very little turkey.
 2 Q. Okay. Is it fair to say from 1993 to
 3 at least 1999 you were the general
 4 manager of this operation on behalf of
 5 Sarah Lee?
 6 BY MR. KROLL: Sarah Lee?
 7 A. No.
 8 Q. (By Mr. Castro) Or, I'm sorry, of
 9 Hudson.
 10 A. Hudson from 1993 to 1999, yes, that
 11 would be correct.
 12 Q. Okay. And then you became president
 13 when Hudson -- well, Hudson was
 14 acquired by Tyson and you remained
 15 general manager while Tyson owned it?
 16 A. Yeah. Tyson -- I think Tyson,
 17 somewhere in there, named me president
 18 before. I think they were trying to
 19 make me feel good, or something.
 20 Q. Okay. As president what are your
 21 responsibilities for what is now known
 22 as Willow Brook Foods?
 23 A. I'm responsible for basically setting
 24 the strategic direction of the company,
 25 working with my staff to come up with

1 action plans and to ensure that those
 2 action plans are carried out and that
 3 we meet the financial objectives of our
 4 shareholders and our financial
 5 institutions that have a stake in it.
 6 Q. Okay.
 7 A. Hopefully there's a lot more to it than
 8 that, but....
 9 Q. You know we're here today pursuant to
 10 the subpoena, which we mentioned at the
 11 deposition. My clients, Mr. Briggs,
 12 are Unitherm Food Systems and Jennie-O
 13 Foods. Mr. Kroll is here on behalf of
 14 ConAgra Refrigerated Foods, and he is
 15 the defendant in the lawsuit. Are you
 16 familiar with those parties?
 17 A. Intimately.
 18 Q. All right. When did you first meet or
 19 speak with David Howard, do you recall?
 20 A. I personally met David sometime in the
 21 fall of 1996, I think it was.
 22 Q. Do you know when the company, and that
 23 would be at the time Hudson Foods, when
 24 the company first made contact with Mr.
 25 Howard or Unitherm?

1 Q. Okay.
 2 A. And, you know, someone said David had
 3 something and we went to look.
 4 Q. What type of products were you
 5 attempting to shift over to a new way
 6 of browning? I say browning and
 7 smoking, you mentioned smoking, are
 8 they interchangeable for purposes of
 9 your processing?
 10 A. You can brown without an agent, without
 11 adding an agent.
 12 Q. For example, by using Maillose?
 13 A. No, you can brown by just heating, you
 14 know, putting dry heat on.
 15 Q. Okay.
 16 A. For a period of time. I mean, it's
 17 like you don't add anything to the
 18 turkey at Thanksgiving, but when you
 19 take the lid off or take the foil off --
 20 Q. Right.
 21 A. -- you can crisp it up.
 22 Q. Right.
 23 A. That to me is browning. Now smoking is
 24 the actual changing of color and
 25 imparting taste flavor through those

1 A. Probably in early summer of 1996.
 2 Q. Do you know why the company first made
 3 contact with Mr. Howard?
 4 A. Yes.
 5 Q. Why was that?
 6 A. We had heard -- we had heard -- first
 7 of all we were working on, you know, a
 8 way to basically -- basically automate
 9 our re-smoking process, and looking to
 10 do it in a continuous manner. We had
 11 talked to several different people and
 12 were testing and just exploring any
 13 option, and someone, and I don't know
 14 exactly who, told us that David's
 15 company had a process or a piece of
 16 equipment that we ought to take a look
 17 at. And I don't know how that
 18 happened, it may have been through Dr.
 19 Phil Weiner, it might have been through
 20 any number of ways, but, you know, we
 21 were really interested in this because,
 22 you know, we had bottlenecks in our
 23 plant, we had all kinds of issues
 24 related to this, and this would reduce
 25 our cost and simplify our system.

1 chips. But you can also brown without
 2 imparting any flavor.
 3 Q. And I used Maillose as an example.
 4 A. And Maillose would be an example of
 5 that, right.
 6 Q. Okay.
 7 A. So, I mean, yeah. With the exception
 8 of -- you're correct with the exception
 9 of you can brown without adding any
 10 other agent.
 11 Q. Okay.
 12 A. Through a roasting process.
 13 Q. So it was late fall or fall of '96 when
 14 you first spoke to Mr. Howard. At
 15 that time did you, on behalf of the
 16 company, enter into a business
 17 relationship with Mr. Howard and his
 18 company, Unitherm?
 19 A. I'm not sure I understand.
 20 Q. Okay, did you enter into an agreement
 21 to buy the process from Mr. Howard, the
 22 process being the oven and the way to
 23 brown product that you were processing
 24 at your plant?
 25 BY MR. KROLL: Objection

3 A. to the form of the question.
 4 The -- my company went to and did all
 5 the testing, so my R & D people, my
 6 quality people, my manufacturing
 7 people. I followed up with them and
 8 they told me how it was going and then
 9 I took their results and ran them
 10 through the cost accounting and all of
 11 that. The day I met David was the day
 12 I gave him the P.O.

11 Q. (By Mr. Castro) Okay.

12 A. All of my people said that this is --
 13 this is -- this will work and this is
 14 the way to go.

15 Q. Okay. And I'll show you -- here in a
 16 minute I'll show you some exhibits that
 17 will show you the purchase order, show
 18 you some testing, some comparison
 19 things such as that --

20 A. Yeah.

21 Q. -- so that we can lay the chronology.

22 A. Yeah. Yeah. But, you know, they
 23 brought me in, I mean, I was intimately
 24 involved with all the details, you
 25 know, because I was excited about

1 getting this thing going and, you know,
 2 I was selling the Hudsons because we
 3 were talking about, you know, a
 4 multi-hundred thousand dollar
 5 investment, so, you know, I had -- I
 6 was selling Mike Hudson and Hudson
 7 Foods on making, you know, a \$500,000
 8 investment, so I was sticking my head
 9 in, you know.

10 Q. Up until the time you or the people
 11 that were within the company met with
 12 Mr. Howard, how were you browning or
 13 smoking your turkey product for
 14 commercial use?

15 A. We were using the two ways that I
 16 talked about earlier. We were either
 17 cooking it and smoking it in one
 18 process or we were cooking it in a bag,
 19 then removing that bag, and then
 20 putting it back into the smokehouse to
 21 apply the color and smoke.

22 Q. In both instances you were using the
 23 batch oven?

24 A. Batch oven, right.

25 Q. Okay. Mr. Briggs, at issue in this

1 litigation is a process for browning
 2 precooked whole muscle meat products by
 3 applying a liquid pyrolysis to the
 4 surface of the meat and then subjecting
 5 it to a high temperature without
 6 significant shrinkage. Are you
 7 familiar with that process?

8 A. Yes.

9 Q. Is that the process that Mr. Howard
 10 sold to Hudson Foods?

11 A. Yes.

12 Q. Now, what are the benefits of doing it
 13 -- or, should I say, what are the
 14 disadvantages of the batch-house
 15 cooking versus this continuous process
 16 that Mr. Howard sold to your company?

17 A. Time.

18 Q. It took longer to do it in the
 19 batch-house?

20 A. Yeah. It cuts down time, it cuts down
 21 handling, and then in some cases can
 22 increase your yield, it can increase
 23 your consistency, because, you know,
 24 everything is going through the same
 25 environment, so it just basically

1 causes your process controls to be
 2 increased because you're continuous as
 3 opposed to batch.

4 Q. Okay. So we kind of went from me
 5 asking the disadvantages to you giving
 6 me the advantages, I believe, of the
 7 Unitherm process. In other words,
 8 correct me if I'm wrong, the Unitherm
 9 process, in many occasions, yields are
 10 higher, would that be fair to say?

11 A. Can be.

12 Q. Can be higher. The costs are less
 13 significant?

14 A. Theoretically.

15 Q. Okay. And the process is a shorter
 16 period of time, you don't have any
 17 backlog?

18 A. Yes, that would be true. That would be
 19 true.

20 Q. Before you signed the purchase order
 21 did you ever witness the process, ever
 22 observe it?

23 A. No.

24 Q. Okay.

25 A. I knew -- when my people explained it

1 to me I knew what it was.
 2 Q. Exactly. And that's what I asked you
 3 earlier whether -- or when, what time
 4 did Hudson Foods enter into a business
 5 relationship with Unitherm, and by
 6 that, when did they first buy the
 7 process from Unitherm?
 8 A. The day I met David.
 9 Q. Would be late fall of 1996?
 10 A. Yeah. I remember it being dark out and
 11 it was 5:00.
 12 Q. Okay.
 13 A. Because when I met David and I called
 14 all my people up here and I said, you
 15 know, "I'm going to get this money and
 16 I'm going to get this. And I've got
 17 approval to sign this, but if this
 18 doesn't work I'm going to kill you,"
 19 you know. And I remember everybody
 20 say, no, that this will work. And my
 21 people had gone and looked at the
 22 radiant wall oven and some of the other
 23 technologies, and so, you know, they
 24 were certain that this was going to
 25 work. Because I told them this was a

1 A. Oh, yeah.
 2 Q. Sure.
 3 A. Yeah. Exactly.
 4 Q. Were you aware of anyone else in the
 5 industry with a process that David was
 6 trying to -- and Unitherm were trying
 7 to sell to Hudson?
 8 A. There was nobody else out there who --
 9 you know, there was nobody else out
 10 there that I was aware of other than --
 11 I said, you know, we looked at this
 12 radiant wall oven and there was just a
 13 lot of reasons why what David was
 14 selling was better.
 15 Q. Okay. I'll hand you, sir, what I'll
 16 mark as -- I've got a few documents
 17 that your lawyer produced to both sides.
 18 A. Uh-huh.
 19 Q. Pursuant to subpoena. And I'll hand
 20 these to you and mark these as
 21 Plaintiffs' Exhibit #3, and ask you to
 22 review those and identify those, if you
 23 could. They are, for purposes of the
 24 record, Bates stamped WB00000, that
 25 would be five zeros, and a 1 through

1 lot of money.
 2 Q. Sure. And you bring up a couple of, I
 3 think, valid or good points. One is
 4 would it be fair to say that at that
 5 time you were pretty much aware of the
 6 state of the industry and how turkey
 7 products, whole muscle turkey products
 8 were being processed? Is that fair to
 9 say?
 10 A. I think that would be. I mean, you're
 11 asking me was there something I didn't
 12 know was known, I mean, you know. I
 13 would like to think I was up to date,
 14 but --
 15 Q. Well --
 16 A. -- yeah, there may be something that,
 17 you know, somebody else was keeping
 18 ultra-secret, or something like that.
 19 Q. Right.
 20 A. You know.
 21 Q. Right. But you had your employees out
 22 there or representatives within the
 23 company out there looking --
 24 A. Right. Right.
 25 Q. -- for options and alternatives?

1 000136. Howard, is that the stack you
 2 have as well?
 3 BY MR. KROLL: Yes, it is.
 4 Q. (By Mr. Castro) And all of these are
 5 marked confidential and your copy we've
 6 marked also as restricted access.
 7 A. Uh-huh.
 8 BY MR. CASTRO: Howard,
 9 yours isn't stamped that, but that
 10 which will go on the record we thought
 11 would be appropriate to stamp it
 12 restricted access.
 13 BY MR. HANOR: I'd like to
 14 go on the record and indicate that we
 15 produced these pursuant to protective
 16 order that the parties have entered
 17 into.
 18 BY MR. CASTRO: Valid and
 19 good point, and that's why we also
 20 stamped them with the restricted access.
 21 BY MR. HANOR: It was a
 22 protective order that's filed August
 23 7th of 2000 and signed by the parties
 24 and Judge Cawthran.
 25 BY MR. CASTRO: Cawthran.

1 BY MR. HANOR: Yes.
 2 Q. (By Mr. Castro) Mr. Briggs, tell me
 3 when you've had a chance to look over
 4 those to make sure those are the
 5 documents you assembled that were kept
 6 within the business confines of the
 7 company?
 8 A. Yeah. Yeah, these are our documents in
 9 the file that I call the Rapid Flow
 10 file.
 11 Q. Were these documents -- are these
 12 documents compiled and organized as
 13 they were kept in the regular course of
 14 business within the company? Sometimes
 15 people don't want to admit that, but...
 16 A. I don't think I've ever had a file that
 17 was in perfect chronological order, but
 18 it all was in the same file.
 19 Q. But that is from your business records
 20 and you produced those?
 21 A. Yes. Yes. Yes.
 22 Q. I'll ask you to just start at the
 23 beginning and ask you to, if you would,
 24 sir, what is this first document? Mine
 25 happens -- all of these are stapled as

1 they were produced to us, and the first
 2 document to me is Bates stamped WB1
 3 through 10. What is that document?
 4 A. This first document was one of our
 5 initial seeing if we could -- and some
 6 of these graphs are to see if we could
 7 extract heat out of the product, and
 8 really that's what this represents is
 9 impingement cooling of the extraction
 10 of heat, and then this is -- at that
 11 particular time, one of the things that
 12 we were looking at was actually taking
 13 a product that we had had and actually
 14 chilling it, a raw product, and we were
 15 looking at doing it in a continuous
 16 fashion. And this right here
 17 represents, you know, we wanted to get
 18 it as close to freezing without
 19 freezing it, that's what that
 20 represents, which led us to this, which
 21 was, you know, the impingement, you
 22 know, impingement oven process, which
 23 kind of led us to the radiant wall
 24 oven. The radiant wall oven was -- and
 25 I think the radiant wall oven was when

1 we really first applicated the smoke,
 2 in through there, but, you know, our --
 3 and then to the Unitherm, and so you
 4 can see here's a comparison of Radiant
 5 Wall --
 6 Q. Yeah. Let's go over there to now Bates
 7 stamp WB 11 --
 8 A. Okay.
 9 Q. -- through 13 is how it was presented
 10 to me, and at the top is -- the first
 11 page is a handwritten document that at
 12 the top has RWO?
 13 A. Right. Right. Right.
 14 Q. Radiant --
 15 A. Wall oven.
 16 Q. -- wall oven is at the top corner?
 17 A. Uh-huh. Right.
 18 Q. You made a better copy for Mr. Kroll, I
 19 see, than you did for me. June 25th,
 20 '96.
 21 A. Uh-huh.
 22 BY MR. KROLL: I'm sorry,
 23 it says radiant wall oven on the top
 24 right, is that what you're --
 25 BY THE WITNESS: Yeah, this

1 is radiant wall oven.
 2 BY MR. KROLL: Fire oven?
 3 BY THE WITNESS: Yeah, this
 4 says radiant fire oven.
 5 Q. (By Mr. Castro) Is that the same as
 6 radiant wall oven?
 7 A. Wall oven, yeah.
 8 Q. Okay.
 9 A. That is my handwriting there, the RWO
 10 and the 6/25/96.
 11 Q. All right.
 12 A. This was handed to me in a meeting and
 13 I turned around and since it didn't
 14 have anything on it I put RWO and dated
 15 it, and then I gave it to Carol to file
 16 and she said, "What does RWO stand
 17 for?" and I said radiant wall oven, or
 18 she went to someone else and said,
 19 "What is this?" and somebody said a
 20 radiant fire oven.
 21 Q. Okay. Was it Pyramid that was making or
 22 manufacturing the radiant wall oven, do
 23 you know?
 24 A. I think so, but I don't know that.
 25 Q. I see the second page is oven

1 comparison.
 2 A. Right.
 3 Q. And now it's attached to the June 25th,
 4 '96 page. Were these, if you know,
 5 sir, were they put together on or
 6 around June of '96? Were they compiled
 7 around the same time?
 8 A. I believe so.
 9 Q. Okay.
 10 A. I believe so.
 11 Q. Sir, what is the second page? It reads
 12 "oven comparison." Could you explain
 13 to the jury what is depicted on Bates
 14 stamp number 12?
 15 A. This is something that my R & D people
 16 put together to communicate to me the
 17 differences.
 18 Q. The comparison between the radiant wall
 19 oven and the Unitherm oven?
 20 A. Yeah.
 21 Q. Okay.
 22 A. Yeah, the radiant wall oven and
 23 basically say here are two things that
 24 we are working on. Here's two, you
 25 know, here's the strengths, you know,

1 based upon speed and space and cost and
 2 ability to do different things.
 3 Q. Right. I take it, by my review of this
 4 document, that your company had already
 5 run, oh, for lack of a better word,
 6 sensory tests? Product, you had
 7 already run product through both ovens?
 8 A. Right.
 9 Q. Is that fair to say?
 10 A. That's correct.
 11 Q. Because I see here down, oh, the fourth
 12 or fifth, when it comes to key
 13 attributes the fourth item -- or,
 14 excuse me, fifth item is flavor, and
 15 the radiant wall oven it reads, "To be
 16 evaluated. Unitherm oven maintained."
 17 What does that mean, if you know?
 18 A. The problem we had with the radiant
 19 wall oven was because it was such a
 20 high heat, I mean, we're talking 1600
 21 degrees, it had a tendency to burn the
 22 product or, you know, basically burn
 23 the smoke. And my concern was -- a
 24 concern of all of us was that because
 25 of the extreme high heats that as it

1 went through shelf life that it would
 2 get more burnt flavor, and so "to be
 3 evaluated" was that we were doing shelf
 4 lives to -- you know, with the Unitherm
 5 it was pretty -- you know, we didn't
 6 need to go through -- we didn't need to
 7 go through the same kind of -- because
 8 it wasn't as radical, you know, with
 9 the high heat. You know, you kind of
 10 could initially taste a burnt flavor,
 11 as opposed to the Unitherm that used
 12 much lower heat. You didn't get the
 13 burnt flavor. And it wasn't
 14 objectionable, but I was concerned that
 15 it may get worse and worse as the
 16 product went through its shelf life.
 17 That's what that meant.
 18 Q. Okay. You talk about the Unitherm oven
 19 was at a lower heat. Do you recall the
 20 heating parameters of that oven?
 21 A. I didn't get into that level of detail.
 22 Q. Okay. The next column is color, and I
 23 see here that the radiant wall oven
 24 reflects less successful, and it has in
 25 parentheses "evenness and

1 consistency," and then you go to the
 2 Unitherm oven and it has more
 3 successful and in parentheses
 4 "evenness and consistency." Could you
 5 explain what that means?
 6 A. Yeah. The radiant wall oven dealt with
 7 something that was dealing in
 8 temperatures of 1200 degrees, or maybe
 9 even as high as 1600. At those levels,
 10 at that high a temperature, just a
 11 minor -- just minor changes in the
 12 amount of time that that product was
 13 exposed or that liquid smoke was
 14 exposed could create -- I mean, if you
 15 got it right you got it right, but it
 16 didn't have the same -- didn't have the
 17 same tolerances, because, you know,
 18 maybe you can expose something in the
 19 Unitherm oven for, you know, five
 20 minutes, let's say. Well, five -- you
 21 could be five extra minutes and it will
 22 get a lot darker, but five extra
 23 seconds in the radiant wall oven at
 24 1600 degrees was the difference between
 25 having a really good color and having

1 toast.
 2 Q. Sure.
 3 A. So....
 4 Q. I go down and I see the yield gains
 5 are about the same. The radiant wall's
 6 98 percent and 97 percent for the
 7 Unitherm. When I read yield gain am I
 8 correct in assuming that you mean --
 9 A. The moisture lost in performing the
 10 test.
 11 Q. The Unitherm three-percent moisture
 12 loss from beginning weight to finished
 13 weight?
 14 A. Right. Right. Correct.
 15 Q. Okay.
 16 A. Right.
 17 Q. Heating method, you have gas radiant
 18 wall and then you have electric. And
 19 you have for Unitherm "electric, big
 20 plus on safety," do you know what means?
 21 A. Yeah. You know, with electric we can
 22 tie it into anything in our plant.
 23 With a gas-fired oven, you know, we
 24 would have to run gas lines to, and
 25 evacuate, you know, both, you know,

1 from a safety standpoint. Anytime you
 2 run a gas line, you know, and then
 3 you've got to evacuate that gas, too,
 4 where on electric, you know, we just
 5 run the cord to it, you know, run the,
 6 you know, hook-ups for it.
 7 Q. Right. Then the next few -- a few
 8 lines down is proven system, which, by
 9 the way, I see that it's denoted with
 10 is that a star that says "key factors
 11 in decision"? That star is also on
 12 color, is that correct?
 13 A. Right.
 14 Q. Now what does it mean here by proven
 15 system? It has radiant wall oven is
 16 none proven and Unitherm oven several
 17 proven. Do you know what that means?
 18 A. The several proven -- several proven,
 19 it refers to there were Unitherm ovens
 20 that were out there currently not doing
 21 exactly what we were going to do, but I
 22 don't know that to be a fact or not.
 23 Q. Okay.
 24 A. But there were no radiant wall ovens,
 25 that I was aware of, out there. It

1 was a -- you know, it was a technology
 2 that Pyramid or whomever that was, I
 3 don't recall --
 4 Q. Okay.
 5 A. I think they were out of Boston, I
 6 remember that. You know, they were --
 7 but there were rapid flow ovens that
 8 I'm aware of that were being used, if
 9 not for what we were doing certainly to
 10 cook chicken products.
 11 Q. And down below I see other components.
 12 Under the radiant wall there's none and
 13 then under Unitherm oven it includes a
 14 bag stripper and a proven drench
 15 system. And I guess that was a -- was
 16 that a plus for Unitherm, for the
 17 Unitherm oven? The process, was it an
 18 all-in-one process that you were buying?
 19 BY MR. KROLL: Objection
 20 to the form.
 21 A. It was -- how do I say this? David
 22 was selling a complete system.
 23 Q. (By Mr. Castro) Uh-huh.
 24 A. In which, you know, was the bag
 25 stripper and the drench system and, you

1 know, the oven and a cooling system.
 2 And we were buying -- we were buying
 3 the system, but we felt like that there
 4 were things in the system that, you
 5 know, we could either do better or
 6 cheaper.
 7 Q. Okay. The system, is it fair to call
 8 it a process as well? Would that be a
 9 fair characterization?
 10 A. Yeah. I think that -- you know, I
 11 think David and Unitherm were selling a
 12 system, a concept, and we were the ones
 13 who were the kind of the people that
 14 refined it.
 15 Q. You tinkered with it, refined it for
 16 what you specifically needed?
 17 A. Yeah. Yeah. Yeah. I would say that
 18 would be true.
 19 Q. And part of the system that you bought,
 20 it was used, was it not, sir, to
 21 process precooked whole muscle meat
 22 products, is that true?
 23 A. Right.
 24 Q. Okay.
 25 A. Yeah.

1 Q. And I see the last page of that
 2 document says an estimated cost
 3 comparison?
 4 A. Yeah. Yeah. That was the other piece
 5 of it.
 6 Q. The next document, Mr. Briggs, I'd like
 7 you to look at is Bates stamped 28.
 8 A. Uh-huh.
 9 Q. Can you identify that document?
 10 A. Yeah. Lisa Thomas was the person --
 11 Q. No, no, no. Number 28. Go ahead, I'm
 12 going to try to speed this up.
 13 A. Oh, okay. Yeah.
 14 Q. And that's 19 and I'm going to try to
 15 go --
 16 A. Is that 28?
 17 Q. The next one. Sir, that's a September
 18 13th, 1996 letter.
 19 A. Yeah.
 20 Q. It appears to be, as it says at the
 21 top, a Unitherm Rapid Flow II
 22 Continuous Convection Oven.
 23 A. Right.
 24 Q. Have you seen that document before?
 25 A. I'm sure, yeah, I have.

1 Q. Who is Rick?
 2 A. Rick Bohonek --
 3 Q. Bohonek.
 4 A. -- was the plant engineer.
 5 Q. And Mr. Andrew Cobb?
 6 A. He -- Rick Bohonek works for Boar's
 7 Head now. Andrew Cobb is production
 8 superintendent. He works here, is
 9 still with us. And Tony Muller was our
 10 R & D, head of R & D. Tony now works
 11 for Protein Technologies. So these
 12 were the three critical people;
 13 manufacturing, engineering, and R & D.
 14 Q. I see on the third page, actually it
 15 says page four here, it would be page
 16 four, it gives you the quotes for the
 17 oven and the bag stripper and the
 18 impingement chiller and the liquid
 19 smoke drench tank?
 20 A. That's correct.
 21 Q. All right. Let's go on, sir, to --
 22 A. Okay.
 23 Q. Actually, let's go backwards now,
 24 because it's in order, somewhat in
 25 chronological order. It's number 19

1 now.
 2 A. Okay.
 3 A. And it's actually, as it's stapled to
 4 my document number 19 through 26.
 5 Could you identify for us what that
 6 document is, or group of documents?
 7 A. It is a more detailed synopsis of
 8 Tony's tests of both the rapid flow and
 9 the radiant wall oven, and going into
 10 more detail using, as you can see here,
 11 different kinds of smoke and different
 12 ways to use the oven. That's on that
 13 smoke side.
 14 Q. With these comparisons or testing, were
 15 the products -- correct me if I'm
 16 wrong, were they both browned and
 17 smoked during this testing procedure?
 18 A. Yeah. Where it says Maillose and where
 19 it says oven roast --
 20 Q. Okay.
 21 A. -- you can see where it says SSP and
 22 code 63. We were trying different
 23 smokes, different Mailloses, we were
 24 trying -- yeah.
 25 Q. What's SSP? What does that mean?

1 A. It is a particular type of smoke.
 2 Q. Now I notice here on the left it has
 3 product and it has numbers.
 4 A. Right.
 5 Q. These are number codes for different
 6 products --
 7 A. Right.
 8 Q. -- that you wanted to use?
 9 A. Right.
 10 Q. In order -- or, excuse me, different
 11 products that the company wanted to
 12 utilize this process?
 13 A. Right. Right. Those were my code
 14 numbers.
 15 Q. What's product code 51002? Does that
 16 have a name, is that a product?
 17 A. Yes. You're going to get me -- why
 18 didn't you ask me 50044?
 19 Q. Well, I'll ask you that one first. I'm
 20 going to go down. Is the 50044, what's
 21 that product?
 22 A. That is a honey mesquite. The 76 is
 23 oven roasted.
 24 Q. Oven roasted?
 25 A. Right. The 55144 is a smoked shaver

1 and 51002 is I think a whole muscle
 2 browned or muscle smoked, one of the
 3 two.
 4 Q. Is the 50044, is that also a whole
 5 muscle meat product?
 6 A. Yes, it is.
 7 Q. Is the 55144 a whole muscle meat
 8 product?
 9 A. No, it is not whole muscle.
 10 Q. What about the 50076?
 11 A. Yes, it is. I feel really bad that I
 12 don't know my own code numbers.
 13 Q. Well, there'll be some relating numbers
 14 later, I just --
 15 BY MR. KROLL: We won't
 16 tell anybody.
 17 A. Yeah, that is a skinless browned turkey
 18 breast.
 19 Q. (By Mr. Castro) And I see that this is
 20 a memo to Springfield management from
 21 Tony Muller?
 22 A. Right.
 23 Q. Who you identified earlier as in the
 24 research and development department?
 25 A. Right. Right.

1 Q. And it's dated September 19th, 1996?
 2 A. Correct.
 3 Q. And it deals with data comparison
 4 between the RWO and RF oven for drench
 5 smoke application. And I see down
 6 below, sir, actually the one sentence
 7 that stands alone toward the end of
 8 that page --
 9 A. Uh-huh.
 10 Q. -- that reads, "Subjective color and
 11 taste evaluation need to be conducted
 12 on products tested," do you see that?
 13 A. Uh-huh.
 14 Q. At that time were tests being done on
 15 -- with both of these processes?
 16 A. Uh-huh.
 17 Q. Is that a yes?
 18 A. Yes.
 19 Q. All right. I don't know if you've ever
 20 seen these, but I'm going to show them
 21 to you. And I may not mark it so I
 22 may take that off. That is Bates
 23 stamped U -- or, excuse me, UO5587
 24 through U-05590, which are Unitherm
 25 Food Systems cooking trial data sheets.

1 Have you seen these before?
 2 A. I have not seen these sheets, no, sir.
 3 Q. Okay. You see the date of September
 4 12th, '96?
 5 A. Right. Right.
 6 Q. And supplied -- it's different product
 7 that were supplied --
 8 A. Right.
 9 Q. -- by Hudson. And as you go through
 10 these pages the first one is oven
 11 roast, second is -- what is that a
 12 Maillose?
 13 A. Right, 5076.
 14 Q. And the third is a 44, probably that
 15 honey mesquite.
 16 A. Right.
 17 Q. Would that be fair to say?
 18 A. Right.
 19 Q. And then smoked white 51002.
 20 A. Right.
 21 Q. This is around, sir, isn't it, the same
 22 time as you got back this evaluation on
 23 product --
 24 A. Correct.
 25 Q. -- and the smoke application?

1 A. Yes.
 2 Q. Okay.
 3 A. And I'm sure that these are one and the
 4 same. We did all of our testing at
 5 Enid -- or Enid, Ponca City.
 6 Q. Ponca City?
 7 A. Ponca City.
 8 Q. Explain, sir, what do you mean you did
 9 all of your testing? What would take
 10 place when you tested the product?
 11 Explain that to the jury so they'll
 12 understand.
 13 A. Well, Tony would get product from here
 14 that was not smoked or not browned, and
 15 we would put that together and then we
 16 would drive over to Ponca City and run
 17 the test.
 18 Q. Okay.
 19 A. And just like you would -- and those
 20 are the test results.
 21 Q. And --
 22 A. Or the test documents.
 23 Q. The documents. Were these -- do you
 24 know whether these were provided to
 25 Hudson Foods for their review?

1 A. I'm sure that Tony and whomever, since
 2 I wasn't there, whomever, either David
 3 or David's people worked in concert to
 4 come up with those. I'm sure that we
 5 thought that either -- that that was
 6 your and our data together.
 7 Q. Okay. I'm going to go ahead and mark
 8 this then, sir, as Plaintiffs' Exhibit
 9 #4. If you'll look, I notice cook time
 10 it has 350 degrees celsius for cooking
 11 on the first page, is that right?
 12 A. Yes.
 13 Q. That would have been one of the oven --
 14 A. Yeah.
 15 Q. -- temperatures?
 16 A. Uh-huh. Yeah.
 17 Q. Okay. So I take it, let me make sure
 18 we're clear for the record, that when
 19 you ordered the Unitherm oven and all
 20 that went with it, that process, you
 21 did not order the Pyramid or the RWO
 22 oven, is that correct?
 23 A. That is correct.
 24 Q. That's the second document, it appears
 25 to give the number 20. The second page

1 wasn't even that I put together a big
 2 dog and pony, I had my people -- I
 3 just presented my people's work and
 4 said, You know, this is a no-brainer,
 5 this is --
 6 Q. Right. When you talk about the
 7 comparison you're talking about that
 8 document Bates stamped 12?
 9 A. Right.
 10 Q. The oven comparison?
 11 A. Right. And, you know, like anything it
 12 was very important to have -- to show
 13 that, you know, we weren't just going
 14 blindly down one path.
 15 Q. Right.
 16 A. That we had looked at several
 17 alternatives and this was the best way
 18 to go.
 19 Q. Absolutely. I'll show you now, sir,
 20 what I've marked as Plaintiffs' Exhibit
 21 #5.
 22 A. Okay.
 23 Q. That's a -- have you seen this document
 24 before? By the way, who's Gus Hargis?
 25 A. Gus Hargis was the person who bought

1 after that has --
 2 A. Yes.
 3 Q. -- a budget price for that.
 4 A. Yes.
 5 Q. Sir, at what point in time did you go
 6 to the company and ask for a budget to,
 7 if you know, to purchase the Unitherm
 8 process?
 9 A. I was speaking to Mike Hudson, who was
 10 my boss, who was president of the
 11 company, daily, weekly, all through
 12 this process. I mean, I was telling
 13 him that, you know, because this was a
 14 pretty big deal. You know, not only in
 15 the dollars that we could save but also
 16 in the bottlenecks that it would
 17 eliminate in our process. And so I was
 18 continually talking to him about the
 19 scope, so it wasn't really an
 20 opportunity to do a -- you know, I had
 21 him sold before I gave him this sheet
 22 of the comparisons, and then I think
 23 Lisa, at some point in time, put
 24 together some -- and it should be in
 25 here somewhere, where -- I mean, it

1 maintenance-type things. I don't know
 2 exactly what his job title, but he
 3 worked for me.
 4 Q. Okay.
 5 A. Or worked for my company, not for me.
 6 You know, if you wanted a part you go
 7 to Gus and Gus issues a P.O.
 8 Q. What I've handed to you now is an
 9 October 30th, 1996 order confirmation
 10 from Unitherm to Mr. Hargis.
 11 A. Right.
 12 Q. Does that, sir, represent the sales
 13 order for the Unitherm process?
 14 A. Yeah, I think so. Order confirmation,
 15 yeah, it is.
 16 Q. Who's Joe Thompson? He's on the second
 17 page.
 18 A. He was the plant manager at this point
 19 in time. Yeah, he was the plant
 20 manager at this time.
 21 Q. Okay.
 22 BY MR. KROLL: I'm sorry,
 23 did you mark that?
 24 BY MR. CASTRO: Yeah,
 25 Plaintiffs' #5.

1 Q. (By Mr. Castro) Number 27, now we'll go
2 to the next Bates stamp, it appears to
3 be just a duplicate of --
4 A. Yeah.
5 Q. -- number 19.
6 A. Yeah, it -- this is -- the one that
7 you've got stamped 19 has notes of
8 mine, you know, and this is a clean
9 copy.
10 Q. All right.
11 A. I doodled here. I asked some questions
12 and, you know, kind of wrote down some
13 things. Don't ask me to tell you what
14 it means, though.
15 Q. Let's look, sir, now at the document
16 that begins as number 33.
17 A. Okay.
18 Q. The next document.
19 A. Right.
20 Q. What is that document, sir?
21 A. At that point in time I was really --
22 you know, we had pretty much made up
23 our mind about what we were going to
24 do, and I asked Lisa to basically
25 document to me the total cost savings

1 on an annualized basis based upon the
2 test results that we had received from
3 Tony and Andrew.
4 Q. Could you identify that document for us
5 for the record, sir, what it is?
6 A. Yeah, it's an intercompany memo,
7 9/23/1996, to basically all parties
8 involved of our management, and
9 basically it says "Rapid flow oven
10 potential yield savings analysis." And
11 what she's saying is that based upon
12 the test results that we received that
13 we would say \$2,426,768 in yield
14 savings on an annualized basis.
15 Q. What do you mean by yield savings?
16 A. The difference between the current
17 process we were using and using the
18 rapid flow process would save us the
19 two and a half million dollars, \$2.4
20 million, based upon not cooking out
21 that weight. In other words, you get
22 more weight at the end of the process,
23 and so obviously you sell weight to the
24 end consumer or to the retailer, so
25 you're able to sell that poundage?

1 A. Right. You don't lose it in
2 evaporation.
3 Q. Right. And this analysis is solely --
4 it solely deals with yield then?
5 A. Right.
6 Q. Would there also be other benefits,
7 other cost benefits to using the
8 process?
9 A. There were.
10 BY MR. KROLL: Objection
11 as to form.
12 A. There were many additional benefits.
13 Q. (By Mr. Castro) What were the -- let
14 me state it this way. What were some
15 of the other economic benefits, over
16 and above simply better yield? We
17 probably touched on them earlier,
18 but...
19 A. Yeah. The biggest issue, at that
20 particular time in my plant, was
21 getting the product off racks. Because
22 the product, you know, you only have so
23 much physical space. So those racks
24 are in here and, you know, a rack is
25 over here on the cook side, well,

1 you're over here on the raw side, you
2 got to have racks to put product on, so
3 if you're tying up your racks all the
4 time you kind of don't have the
5 continuous flow of our own process. So
6 by taking that product and keeping it
7 moving, and keeping that product
8 moving, you're allowed to always have
9 racks freed up to be able to, you know
10 -- the amount of handling, reduced
11 handling, and reduced handling can
12 result in economic costs, food safety
13 costs, you know, quality, you know, all
14 of those things.
15 Q. When you say "food safety costs", you
16 mean the less people touch that product
17 the less chance it's going to be
18 contaminated?
19 A. Correct.
20 Q. All right. Now I notice here on the
21 second page that the largest -- would
22 it be fair to say that the largest item
23 or the item that you intend to -- or
24 the product you intend to use most with
25 the process would be this item number

1 50044? Is that accurate?
 2 A. Correct.
 3 Q. And that's the gourmet recipe honey
 4 mesquite smoked?
 5 A. That is correct.
 6 Q. Is that a -- would that be a precooked
 7 whole muscle turkey product?
 8 A. Yes, it would.
 9 Q. Okay. And what about the prestige
 10 honey mesquite turkey breast?
 11 A. That would also be whole muscle.
 12 Q. And that's item number 57934?
 13 A. Yes.
 14 Q. Okay. Now I notice on the third page,
 15 I don't really understand this so maybe
 16 you can explain it, it's Bates stamped
 17 36. Maybe it's the fourth page. I'm
 18 sorry, it is the fourth page.
 19 A. Uh-huh.
 20 Q. You have fried/Maillosed products.
 21 What is that category meant to include?
 22 What does that mean?
 23 A. That means that these products are not
 24 -- are applied with oil or browning
 25 agents, as opposed to smoking. Smoke

1 imparts a particular flavor.
 2 Q. Okay.
 3 A. You know, based upon, you know,
 4 anything from apple wood to cherry
 5 wood, you know.
 6 Q. All right.
 7 A. Where the browning is really the
 8 putting on of color without flavor, and
 9 oil imparts a flavor uniquely to itself.
 10 Q. Right. Now I see here there are four
 11 different products that you want to run
 12 through Unitherm's process that deal
 13 with Maillose.
 14 A. Yes.
 15 Q. Those are product -- or item number
 16 50086, the gourmet recipe Italian herb.
 17 A. Yes.
 18 Q. Is that a turkey product?
 19 A. Yes, it is.
 20 Q. Is that a precooked whole muscle meat
 21 product?
 22 A. Yes, it is.
 23 Q. What about the 50082, gourmet recipe
 24 maple brown sugar?
 25 A. Yes, it is.

1 Q. Is that a precooked whole muscle meat
 2 turkey product?
 3 A. Yes, it is.
 4 Q. And what about 50076, the -- what is
 5 that, the president's select national --
 6 A. Natural roast.
 7 Q. Natural roast, oil browned?
 8 A. It is a whole muscle turkey product.
 9 Q. But it says oil browned, but it's not
 10 actually -- it's not fried, is that
 11 correct? I mean, it's browned actually
 12 with Maillose, that's just the product
 13 name or tell me if I'm wrong there.
 14 A. Right. In this particular product
 15 process we were browning this
 16 particular product with oil, frying it
 17 in oil --
 18 Q. Okay.
 19 A. -- and we wanted to move it over to
 20 Maillose.
 21 Q. Oh, okay. You wanted to change your
 22 way of --
 23 A. Right.
 24 Q. -- producing it. What about --
 25 A. But there are other ones that say fried.

1 Q. Right.
 2 A. We actually felt like we could come up
 3 with a substance that would allow us to
 4 impart the fried look and flavor
 5 without frying it. Actually to come up
 6 with some sort of oleoresin that would
 7 -- you know, some sort of substance
 8 that would impart that fried flavor
 9 without actually really frying it. So
 10 we were going to applicate it through
 11 the Unitherm.
 12 Q. The Unitherm process?
 13 A. Right.
 14 Q. All right, I see. So even though it
 15 says fried, you were going to move it
 16 over to that?
 17 A. Right.
 18 Q. I see.
 19 A. We wanted to get out of frying. We
 20 felt like if we could get our fryer out
 21 of here we could, you know, have a
 22 safer plant, you know, when you fry in
 23 600-degree oil, a chance of fire, a
 24 chance of somebody getting hurt. If we
 25 could do it through this process we

1 could take our fryer out and still
 2 deliver fried-type without the risks
 3 associated with having boiling oil.
 4 Q. Did it also benefit your labeling
 5 standards? Do you know what I mean by
 6 that? In other words, if you were able
 7 to keep from having to fry the products
 8 you wouldn't have to put that on the
 9 labeling, which may be a health
 10 conscious concern?
 11 A. It could. It could. It's one of that
 12 old doubled-edged sword, you know.
 13 Some people like their product fried,
 14 you know.
 15 Q. Let's go on to Bates stamp 40. I take
 16 it this next sheet is, by the way,
 17 before I skip over this Bates stamp 38,
 18 that's just some more cost savings,
 19 potential yield return analysis?
 20 A. It's the -- it probably predates the
 21 other one we looked at.
 22 Q. That's a good point. It's dated, isn't
 23 it, 9/24/96? And what's the date of
 24 the one attached to the memo?
 25 A. 9/23. Yeah, maybe -- yeah, her other

1 we're -- here's what we're going to buy.
 2 Q. And that includes the oven. What's a
 3 CIP?
 4 A. The CIP is the continuous cleaning
 5 process.
 6 Q. The bag stripper and the liquid smoke
 7 dredge tank?
 8 A. Right.
 9 Q. Let's look at the next document, which
 10 is number 41.
 11 A. Right.
 12 Q. Would you tell the jury what that
 13 document is, sir?
 14 A. This is Lisa, who was in charge of
 15 basically keeping the project going,
 16 from a marketing standpoint, giving us
 17 a status report of what we were doing.
 18 We had made the purchase and we were --
 19 the oven was going to come in here and
 20 she gave us a timetable of everything
 21 that needed to be done in order to get
 22 it in here. And you can see on the
 23 second page is her time line to get it
 24 up and running. At the same time we
 25 wanted to do continuous tests because,

1 one is 9/23, also. So I think what
 2 happened was we got this first and I
 3 looked at it and I changed something.
 4 Q. Well, the second one is actually out
 5 printed out later, a day later, isn't
 6 it?
 7 A. Yeah. I think what I did was I told
 8 her that either you got to include this
 9 or you can't include this.
 10 Q. Okay.
 11 A. I think she changed this on my
 12 direction because she had either too
 13 much in there or too little. I can't
 14 tell what's what.
 15 Q. You still have the item numbers 50044 --
 16 A. Right.
 17 Q. -- and 57934 in that analysis?
 18 A. Yes. And two million one hundred
 19 forty-one in cost savings, so it wasn't
 20 a major material change. I mean, it
 21 was a lot of money, but...
 22 Q. What's this next document, Bates stamp
 23 40? Can you identify that?
 24 A. Yeah. This is a purchase requisition
 25 from us that basically said here's what

1 you know, we wanted -- as soon as we
 2 got the thing up and running we wanted
 3 to be in production, so we were doing
 4 as much of the legwork as we could.
 5 Q. So your company, employees were still
 6 over at the Ponca City facility running
 7 product through?
 8 A. Yeah.
 9 Q. All right.
 10 A. And then we were -- I mean, we had \$2
 11 million that we could save on an
 12 annualized basis plus, you know, all
 13 the other attributes. We wanted to be
 14 up and running as soon as we possibly
 15 could.
 16 Q. I see here on the fourth line down you
 17 talk about product being run through
 18 the process. It appears, do I read
 19 this correctly, "We will be focusing on
 20 the following products in our
 21 colorometer --
 22 A. Right.
 23 Q. -- and Ponca City testing in the next
 24 few weeks," and then you list these
 25 items, these products that you're going

1 to run through it?

2 A. Right. We were prioritizing because we

3 knew once we got set up if we had

4 everything dialed in we could be in

5 production immediately.

6 Q. The major -- it looks like one of the

7 products is the 50044. That's that

8 select mesquite?

9 A. Right. That is correct.

10 Q. Next document, sir, if you could

11 identify that for the record?

12 A. This is a letter from Robert Brooks to

13 our people. What Robert is doing here

14 is he is already seeing that, you know,

15 we can -- you know, with changeovers

16 and everything that we want to be able

17 to reuse our liquid smoke. So he is

18 already putting in that protocol in a

19 testing procedure to basically put

20 together the data to go to USDA and get

21 them to approve a procedure to allow us

22 to utilized liquid smoke. So he is

23 informing everyone that here is what

24 we're going to do, here's the protocols

25 and, you know, here's what we need to

1 Q. Okay.

2 A. I can find out or I can make an

3 assumption, but I don't know.

4 Q. Sure. When you look at this first part

5 and it talks about the temperatures and

6 heating to certain temperatures, is it

7 fair to say that part of the concern in

8 using the batch-house process is the

9 growth of bacteria, in particular, you

10 know, clostridium prevention?

11 A. Certainly.

12 Q. And does this paragraph address part of

13 how that could be prevented?

14 A. Yes. I'm not sure that it totally says

15 that without reading it word for word,

16 but certainly what he was doing was

17 testing to ensure that it met USDA

18 standards for wholesomeness and safety.

19 Q. Okay. And the next document, that's --

20 and attached to that, I'm not sure what

21 -- what are those items, do you know?

22 A. Yeah. This is some more testing that

23 kind of backed up what we were doing.

24 And we added Hickory Specialties in

25 here. And we were making sure that the

1 do to get the data to go to USDA to

2 get them to approve this process.

3 Q. Okay.

4 A. The process of reusing liquid smoke

5 more than a day at a time or a batch

6 at a time.

7 Q. Save money so you don't have to keep

8 buying it?

9 A. Yeah. Exactly.

10 Q. Sure. The title of this document is

11 Hudson's Specialty Foods Quality

12 Control Memorandum, dated December 5th,

13 1996, is that right?

14 A. Yeah.

15 Q. Now I notice the fourth diamond down, I

16 call those diamonds.

17 A. Right.

18 Q. It says, "Extended use smoke solution

19 may only be applied to products which

20 will be heated to temperatures and for

21 times that are in accordance with those

22 set forth in MPI regulations Sections

23 318.17, 318.23, and 381.150." What

24 does MPI mean, do you know?

25 A. No, I do not.

1 -- at this point it really was a real

2 collaborative effort between Hickory

3 Specialties and Unitherm and us and,

4 you know, just, you know, basically --

5 Q. Fine tune it?

6 A. Fine tune it and perfect it to the

7 point of -- that it would, you know --

8 Q. Right.

9 A. Yeah, it was -- and at that point in

10 time Hickory Specialties came through

11 and they were the experts in smoke.

12 The experts in smoke, and so we were

13 trying to, you know, make sure that we

14 followed what Robert was saying on this

15 first page.

16 Q. Okay. Let's go to Bates stamp 48, and

17 it's a document that -- mine's stapled

18 together and it appears to be four

19 pages. Would you identify this

20 document?

21 A. This is a trip report from Dr. Phil

22 Weiner. Dr. Weiner was a paid

23 consultant for us working on many

24 different issues that I had him on, and

25 this basically talks about the

1 different projects and the status of
 2 the FCC's and giving us also some
 3 general direction as to some things
 4 that we ought to do to help us improve.
 5 Q. Okay. Let's go to number 53. Mine is
 6 a -- goes to actually 79.
 7 A. Right.
 8 Q. A group of handwritten --
 9 A. Right.
 10 Q. -- notes. The first is dated January
 11 30th, 1997.
 12 A. Right. These are the --
 13 Q. What are these?
 14 A. These are the handwritten notes from
 15 Dr. Weiner, and he basically -- I'm not
 16 sure if this is, I think it is, we have
 17 the machine up and running. We don't
 18 have all the parts working yet, but we
 19 do have the Unitherm and we are dialing
 20 in through -- basically putting in and
 21 dialing in to the exact colors that we
 22 want so we can write and put into place
 23 the specifications so an operator, you
 24 know, basically can come in and with
 25 very little training can give us the

1 A. That's the weight coming in and the
 2 weight coming out. Basically saying
 3 that we were experiencing anywhere from
 4 1.36 to 1.9, approximately, yield loss
 5 at these settings.
 6 Q. All right.
 7 A. And at these -- you know, the amount of
 8 time over here is talking about the
 9 drench system, you know, what kind of
 10 smoke we had, and how long it was in
 11 the drench tunnel. So here we were
 12 basically dialing in to exactly what we
 13 wanted, and this was just the
 14 documentation of those volumes, those
 15 stats.
 16 Q. I see over here, another page over or
 17 two pages over at 62, down at the
 18 bottom I see oven top and under, and I
 19 see maximum 572 degrees Fahrenheit or
 20 300 degrees Celsius, and then under is
 21 maximum 670 degrees Fahrenheit, 350
 22 degrees Celsius. What are those
 23 numbers? What do they represent? Is
 24 that some more testing?
 25 A. Yeah, just some more testing. I think

1 exact product that we want.
 2 Q. Okay. Look over on Bates stamp 60, and
 3 it has test number eight. I'll wait
 4 for you to get there. It's number 304
 5 dated January 28th, '97. I notice here
 6 to the left there time setting 90, and
 7 then I see the top, bottom, top.
 8 A. Right.
 9 Q. Would you explain what first, second,
 10 third -- first zone, second zone, third
 11 zone, what does that mean? Are those
 12 temperatures beside it?
 13 A. Right. He's saying the time setting
 14 would be 90 seconds.
 15 Q. Okay.
 16 A. On the first zone on the top would be
 17 set at 600 degrees.
 18 Q. That's Fahrenheit?
 19 A. Yes.
 20 Q. All right.
 21 A. And the bottom zone would be 650, and
 22 then the third zone would be 550.
 23 Q. I notice that then you have a one, two,
 24 three. What is the first number beside
 25 the one?

1 what Phil was trying to point out to
 2 us, if I remember right, is that we
 3 probably could get a better consistency
 4 and yield if we didn't run the oven so
 5 hot.
 6 Q. Okay.
 7 A. I remember that was an issue because
 8 our folks wanted to run it hot and fast
 9 and, you know, he was saying run it at
 10 lower temperature for longer times.
 11 You'll get more consistency and better
 12 -- a better product by doing that.
 13 Q. Were these the temperatures he wanted
 14 it to be run at, or do you know?
 15 A. I don't think -- I couldn't answer that.
 16 Q. Okay.
 17 A. But I definitely know that at this
 18 point in time they were -- we tended to
 19 run a little bit higher than we do
 20 today.
 21 Q. Okay. So this stack is simply the test
 22 that she noted while he was on-site?
 23 A. Yes.
 24 Q. Okay.
 25 A. He and Andrew and Robert went down

1 there and did tests and, you know, he
 2 was the note taker.
 3 Q. Okay. All right. I guess the same
 4 would hold true, sir, would it not, for
 5 Bates stamp numbers 80 to 87? These
 6 are dated February 25th, 1997?
 7 A. Right.
 8 Q. Titled Unitherm Operating Conditions?
 9 A. Right.
 10 (Off the record)
 11 (Back on the record)
 12 Q. Let's go to number 92, Mr. Briggs.
 13 A. Okay.
 14 Q. Could you identify that letter?
 15 A. This is Robert Brooks basically
 16 requesting to USDA the complete
 17 procedure, basically saying here is the
 18 procedure that we're going to use to do
 19 this, you know, continuous process.
 20 Q. Okay.
 21 A. And --
 22 Q. And it's attached to the second page?
 23 A. Right, and that procedure is attached
 24 to the second page, and then the third
 25 page is how we're going to keep track

1 A. Unitherm, right.
 2 Q. Let's go to the next document, which is
 3 Bates stamped 97 now, if you would.
 4 This document I'll identify as Unitherm
 5 Food Systems, Inc., invoice number
 6 1877, and it reflects something that
 7 was sold to Hudson Foods. Have you
 8 seen this document before?
 9 A. Yes, I have.
 10 Q. And what does this group of documents
 11 represent? And, by the way, it has an
 12 invoice 1876, 1878, 1880, and 1879.
 13 What do those documents --
 14 A. That is the billing for the
 15 installation time and the out-of-pocket
 16 expenses for the Unitherm people to
 17 install this oven in our Jefferson
 18 Street facility.
 19 Q. Sir, what product were you -- what
 20 products, different types of products
 21 were you processing with the process
 22 that you purchased from Unitherm? Do
 23 you know those off the top of your head
 24 or any group of them?
 25 A. It would be all of our gourmet recipe

1 of things, and the initials represent
 2 the things we're going to keep track of.
 3 Q. Okay, I notice -- I'm sorry, I didn't
 4 mean to interrupt you. I notice on the
 5 second page it's entitled Fully Cooked
 6 Color Application Procedures. By that
 7 does it mean that this is going to be a
 8 precooked product that color or liquid
 9 will be applied to?
 10 A. Right. Right.
 11 Q. Okay. And I notice here that it goes
 12 through the process description under
 13 number one, Roman numeral one.
 14 A. Uh-huh.
 15 Q. And is that the procedure that was
 16 utilized by you?
 17 A. Yes. This is a detail of the procedure
 18 that we would be using, that we were
 19 using --
 20 Q. And this --
 21 A. -- on the --
 22 Q. I'm sorry, go ahead.
 23 A. On the rapid flow.
 24 Q. Okay, and this is that process that you
 25 acquired from Unitherm?

1 items, our 44's, our 82's, our 84's,
 2 our 86's. Basically every single
 3 smoked or browned product that we had
 4 we immediately switched over, and we
 5 had done all the testing.
 6 Q. Now, for people who aren't in your
 7 business or your company --
 8 A. Right.
 9 Q. -- what are 82's?
 10 A. The 82's would be the maple, 84's would
 11 be like our Italian, 86's would be like
 12 our smoked pepper.
 13 Q. Where does --
 14 A. Those may not be right, but generally.
 15 Q. What's that one number, is it 510044?
 16 A. 44. Yeah, 44 is our honey mesquite.
 17 Q. The 44's?
 18 A. Yeah, 44 is our honey mesquite.
 19 Q. And which of those are whole muscle?
 20 A. All the products.
 21 Q. All of those are?
 22 A. All of them.
 23 Q. Okay. What is the principal end use of
 24 that product?
 25 A. It is sliced, will eventually be sliced

1 either in-store supermarket or in a
 2 food service kitchen for sandwiches.
 3 Q. What do you mean by food service
 4 kitchen?
 5 A. A food service kitchen is any kitchen,
 6 food processing facility that you would
 7 eat away from home. So any restaurant,
 8 any hotel, any mass feeding
 9 institution, a school --
 10 Q. University cafeteria?
 11 A. Any non-home establishment.
 12 Q. Airline?
 13 A. Airline.
 14 Q. Okay.
 15 A. Truck stop, anything.
 16 Q. Could you describe for me the
 17 geographic market for those products?
 18 A. We sell in all 50 states. Maybe not
 19 Alaska, but I'm not sure. But these
 20 products would also go, a small
 21 percentage of them, internationally.
 22 Q. Okay. What companies, like Boston
 23 Market or others, do you sell to?
 24 A. Boston Market, Wynn Dixie, Albertson's,
 25 Jewell Food Stores in Chicago, it's

1 part of American Stores, you know, the
 2 arenas in Chicago, the Downer's Grove
 3 racetrack or whatever it is in
 4 Arlington or whatever.
 5 Q. Do you sell to restaurants like
 6 Schlotzky's or stores like that?
 7 A. We don't to Schlotzky's, but stores of
 8 that nature.
 9 Q. Okay.
 10 A. Yeah. Sub shops, yeah.
 11 Q. Look at 104, if you would, sir. And
 12 that's a letter dated April 8th.
 13 A. 104?
 14 Q. Yeah. I went ahead and skipped through
 15 102. That's 102. Go to the next, to
 16 104.
 17 A. Okay.
 18 Q. What's that document? Could you
 19 identify that for the jury?
 20 A. Yeah. I had sent a letter to David
 21 basically saying there were some issues
 22 that needed to be resolved relative to
 23 improving the capability of the oven.
 24 And, you know, at that point in time it
 25 was kind of like we were up and running

1 and we were in market and David was
 2 excited and we were excited and David
 3 wanted to go sell more ovens and I
 4 wanted to tell him to get back here
 5 and, you know, help me improve the oven.
 6 Q. Okay.
 7 A. So it was kind of like the relationship
 8 was -- you know, the sale was done and
 9 we were doing and I was like saying,
 10 "Hey, you know, before you go away I
 11 want you to fix a couple of things for
 12 me."
 13 Q. The process and the oven and all that
 14 went with it were sold to you and, I
 15 take it then, that there may have been
 16 some start-up kinks, start-up issues
 17 that occurred?
 18 A. Yeah.
 19 Q. Were these problems or issues anything
 20 out of the ordinary that you didn't
 21 experience with other companies when
 22 they sold you equipment or processes?
 23 A. Yeah. Yeah. No, they were not. It
 24 is not -- you know, it is not -- with
 25 every piece of equipment, almost, you

1 have issues, and this wasn't any
 2 different from any other piece of
 3 equipment. It was a little bit more
 4 higher -- higher visibility because of
 5 the amount of money that we spent and
 6 the amount of execution that went into
 7 this.
 8 Q. Right.
 9 A. We had all of -- everyone in my company
 10 was working on this project in some
 11 capacity.
 12 Q. Okay.
 13 A. So, you know, there were some of us
 14 that were very -- you know, some people
 15 who were real pleased, and, you know,
 16 then my engineer guy he wanted it, you
 17 know, so when David was gone that he
 18 didn't have to, you know, he wouldn't
 19 have to deal with that problem. He
 20 wanted David to deal with that problem.
 21 Q. Right. Were all those issues resolved
 22 to your satisfaction?
 23 A. Yes, they were.
 24 Q. Okay. And as we sit here today is that
 25 process David sold to you still

1 operating in that facility?
 2 BY MR. KROLL: Objection
 3 as to form.
 4 A. I don't know what that means.
 5 BY MR. HANOR: You don't
 6 need to know. Just answer the question.
 7 A. I don't remember the question.
 8 Q. (By Mr. Castro) And that is the process
 9 that David sold to you, is it still
 10 operating --
 11 A. Oh, yeah. Yeah.
 12 Q. -- today?
 13 BY MR. KROLL: Objection
 14 as to form.
 15 BY MR. HANOR: He's just
 16 making objections to preserve it for
 17 the record.
 18 A. Okay.
 19 Q. (By Mr. Castro) On Bates stamp 106,
 20 let's go on forward, that's a memo.
 21 Could you identify that document?
 22 A. Yeah. This is Phil Weiner's trip
 23 report of April 15th, and he's
 24 basically -- just basically talking
 25 about tests and his observation and all

1 Report." Could you identify for both
 2 the judge and the jury what that
 3 document is?
 4 A. This is basically the production of our
 5 plant, what they did in units and in
 6 pounds, and this is dated 4/28/97,
 7 Monday, it's first shift, and over here
 8 it shows product to the left.
 9 Q. Right. Which products -- I'm trying to
 10 speed this up a little bit.
 11 A. Right. Right.
 12 Q. Which products on this sheet were being
 13 browned or smoked using the --
 14 A. You can see down here --
 15 Q. Let me finish.
 16 A. Okay.
 17 Q. Using the Unitherm process that was
 18 sold to you?
 19 BY MR. KROLL: Objection
 20 as to form.
 21 A. Well, over here on the raw, you know,
 22 there was a whole bunch of them that
 23 probably will get there, but if you get
 24 over into where it says stir fry and
 25 smoke --

1 these other things.
 2 Q. Okay.
 3 A. And you can see my little writing there,
 4 approximately 20,000, saying they ran
 5 production of 22 racks of pre-coated
 6 with Maillose through oven, so, I mean,
 7 22 racks is production.
 8 Q. For you -- so as of April 18th, your
 9 facility here at this location that
 10 we're at today, the Jefferson location,
 11 was commercially producing this product?
 12 A. Right.
 13 Q. Or let me also rephrase that. You were
 14 commercially producing product using
 15 the Unitherm process?
 16 A. Yes.
 17 BY MR. KROLL: Objection
 18 as to form.
 19 A. Yes. The 22 racks of product, 20,000,
 20 we're talking about \$40,000, 40 to 50
 21 thousand dollars worth of product.
 22 That certainly wouldn't be a test.
 23 Q. (By Mr. Castro) Okay. I notice here
 24 on the last page attached it's a
 25 document that reads "Daily Production

1 Q. (By Mr. Castro) Okay.
 2 A. -- over here in the bottom right-hand
 3 corner.
 4 Q. Okay.
 5 A. You can see it says Alkar Unitherm and
 6 fry, and so there you'd have a product
 7 code 57934, we ran 8,492 through the
 8 Unitherm, 50304 we ran five racks, 6342
 9 pounds of product, and 50075 we ran
 10 3610. So that was the actual
 11 production that went through here. And
 12 you can also see --
 13 Q. And that was all the precooked? Is
 14 that all the precooked whole muscle
 15 meat?
 16 A. Right. See, it says 57934 through the
 17 Alkar?
 18 Q. Okay.
 19 A. So it went through the Alkar and was
 20 cooked, and then that same 8492 went
 21 over and ran through the Unitherm to
 22 apply the color.
 23 Q. I see.
 24 A. And if you see the 50304, 6342, then it
 25 moves over to 63. So those numbers --

1 we cooked it in the Alkar and applied
 2 the smoke or applied the brown through
 3 the Unitherm on this particular
 4 production date, 4/28/97.
 5 Q. And is that commercial production?
 6 A. Yes, that is commercial production.
 7 Q. That's not testing is it?
 8 A. No.
 9 BY MR. HANOR: You're
 10 referring to the WB000110?
 11 BY THE WITNESS: Yes, I am.
 12 WB000110 is what I was referring to.
 13 Q. (By Mr. Castro) And that is the daily
 14 production report, weekday Monday,
 15 shift first, date April 28, 1997?
 16 A. Yes, sir.
 17 Q. Now the next document is Bates stamped
 18 000111.
 19 A. Right.
 20 Q. Is that another daily production report
 21 for the following day?
 22 A. Yes, it is.
 23 Q. Mr. Briggs, could you tell us which
 24 product was processed through your
 25 facility here on Jefferson Street

1 A. Right.
 2 Q. -- of April 30th that would reflect --
 3 A. Right.
 4 Q. -- some additional poundage of product?
 5 A. Right. I think we were only running
 6 one shift at that point in time.
 7 Q. Sir, what is the next document, Bates
 8 stamp 000113? Could you identify that
 9 for the jury?
 10 A. Yeah. These are -- these are pack
 11 sheets, what the sell by dates are for
 12 all of our products. So if you
 13 produced, let's say, 5088 -- 5088 that
 14 ran through the Unitherm, that 24,230
 15 pounds --
 16 Q. Okay.
 17 A. -- or this 5034, 17652 --
 18 Q. Okay.
 19 A. -- so a 50304 -- where is 50304?
 20 50302, 50302, 50302. Do you see 50304?
 21 BY MR. KROLL: I would
 22 suggest not writing on this because
 23 this is the original.
 24 BY THE WITNESS: I'm
 25 sorry, I didn't mean to do that.

1 utilizing the Unitherm process?
 2 BY MR. KROLL: Objection
 3 as to form.
 4 A. 50088, 24,230.
 5 BY MR. HANOR: That's
 6 pounds?
 7 A. Pounds. 57934, 6408 and 50304, 17,652,
 8 for a total of 45,290 pounds through
 9 that system.
 10 Q. (By Mr. Castro) Okay. That was first
 11 shift. I see the next page 000112,
 12 what, is that the second shift of the
 13 same day?
 14 A. Right.
 15 Q. How much product was produced using the
 16 system purchased from Unitherm?
 17 A. None was on that shift because they
 18 cooked through the Alkar, and so the --
 19 they would come in and after that
 20 product would get done that was cooked
 21 on second shift then they would come in
 22 on the following morning and run it
 23 through the Unitherm.
 24 Q. So although not produced here today
 25 there would be a document --

1 BY MR. KROLL: That's all
 2 right. You're just underlining
 3 numbers, so....
 4 A. Okay. So basically what it is is that
 5 once this goes into a box, we don't
 6 refer to it as that, we refer to it as
 7 code date 6/23/97. So, basically, in
 8 order to -- that goes through the
 9 Unitherm and it's packed.
 10 Q. (By Mr. Castro) Okay.
 11 A. It would be known by sell by date
 12 6/23/97.
 13 Q. And when you refer to this 000113, it's
 14 dated April 29th, what year is that?
 15 Would that be '97?
 16 A. Yes.
 17 Q. Then you have down here 6/23/97 and you
 18 have a group of different --
 19 A. Product codes.
 20 Q. -- product codes. Are those the
 21 products that need to be sold by that
 22 date?
 23 A. Right. Right.
 24 Q. Okay. And I see here that you've got
 25 product 50004, is that the -- is that

1 that mesquite?
 2 A. Right. Honey mesquite.
 3 Q. Honey mesquite.
 4 A. So, for instance, if you packed on this
 5 particular sheet --
 6 Q. Okay.
 7 A. If you pack on 4/29 that product code,
 8 it will have a sell by of 6/23/97. So
 9 basically -- basically these products
 10 that ran through the Unitherm that got
 11 packed, let's say the 888's --
 12 Q. Which page are you referring back to?
 13 A. I'm going back to 000111.
 14 Q. Okay.
 15 A. And so what happens is is these pounds
 16 -- these pounds, in order to let you
 17 know what they are, this document
 18 basically says these pounds, after they
 19 ran through the Unitherm and they got
 20 put in a box --
 21 Q. Okay.
 22 A. -- became known as that product code
 23 number with a sell by date of 6/23/97.
 24 Q. So is it your testimony today that the
 25 product as noted on 000111 is the same

1 product that's now listed over on
 2 000113?
 3 A. Right. It is that product. What I am
 4 testifying is that product right there
 5 that ran through the Unitherm is
 6 product in the preceding documents that
 7 would be known as sell or freeze by
 8 date 6/23/97.
 9 Q. Okay. And I notice here that you have
 10 many product codes. A product or
 11 turkey, however you want to call it,
 12 that were processed using the process
 13 or system that Unitherm sold to Hudson,
 14 is that correct?
 15 A. Right. Right. This document right
 16 here would be setting at the pack off
 17 and my people who are packing product,
 18 when they would go and pack this
 19 product, this is run off every day, so
 20 that sits here, when they pack that
 21 particular product they set the
 22 machines to say this particular product
 23 should have a sell by, you know --
 24 Q. Right. Okay.
 25 A. So this is their proof, another

1 production document.
 2 Q. So thus far through these documents we
 3 have established that product using the
 4 Unitherm process has been manufactured
 5 commercially, correct?
 6 BY MR. KROLL: Objection
 7 as to form.
 8 A. Yes.
 9 Q. (By Mr. Castro) And then we've now
 10 established that it has now been
 11 packaged for sale, correct?
 12 BY MR. KROLL: Objection
 13 as to form.
 14 A. Correct.
 15 Q. (By Mr. Castro) And just so we're --
 16 Counsel keeps objecting as to the form,
 17 when you talk about process we had an
 18 agreement earlier process could be the
 19 system, the system that was sold by
 20 Unitherm to Hudson, is that correct?
 21 A. Yes.
 22 Q. Okay. Now let's go to the next
 23 document, 000114, and can you -- what
 24 is that document?
 25 A. This is a shipping document, a purchase

1 order from -- basically saying that --
 2 I want to make sure this is a -- yeah,
 3 it is a purchase order from Fleming to
 4 Willow Brook through our sales agent,
 5 Hockenberg-Newburgh basically giving us
 6 the instructions to -- or giving us a
 7 purchase order for our products.
 8 Q. So, as I read this document, it's a
 9 Fleming Companies purchase order,
 10 correct?
 11 A. Correct.
 12 Q. And it shows date ordered April 29,
 13 1997?
 14 A. Right.
 15 Q. And it has purchase order number 611560
 16 and then LI, right?
 17 A. Right. Right.
 18 Q. Terms 10 days. What is 10 days?
 19 A. That we get the money 10 days after
 20 their receipt of their goods.
 21 Q. Okay. And it shows ship, I believe the
 22 top right is that May 6th of 1997?
 23 A. Yeah. They were asking in this
 24 particular -- they are asking us to
 25 deliver it on 5/6.

1 Q. What product -- so at this juncture we
 2 have product that has been --
 3 A. Ordered.
 4 Q. -- processed, packaged, and now it has
 5 been sold, is that fair to say, been
 6 sold to Fleming?
 7 A. This is a purchase order. It is -- it
 8 causes us to do that.
 9 Q. Okay.
 10 A. This is -- so this is what we would
 11 receive instructing us to fill that
 12 order. It's an order.
 13 Q. Order to ship the product?
 14 A. Order to ship the product.
 15 Q. And what product do we have here?
 16 A. We have our honey mesquite, the 44's
 17 that we talked about, the 88's, the
 18 cajun, classic deluxe, bologna,
 19 pastrami, and this 50304. The 44's,
 20 the 88's, and the 304's all would run
 21 through the rapid flow.
 22 Q. And are all of those products precooked
 23 whole muscle turkey product?
 24 A. Yes.
 25 Q. And is this --

1 Q. At a cost of \$2.54 per pound?
 2 A. Correct. Right.
 3 Q. So now we have the next stage, and that
 4 is --
 5 A. Right.
 6 Q. -- you now --
 7 A. Right.
 8 Q. -- had an order to sell --
 9 A. Right.
 10 Q. -- in commercial use that product, is
 11 that correct?
 12 A. Right. Right.
 13 Q. What's the next document?
 14 A. The next document is the fulfillment of
 15 that order. Basically we shipped it
 16 out and delivered this product on 5/6
 17 per their request, and so that's our
 18 confirmation. Behind it, on 116, is
 19 the bill of lading of the product that
 20 shows and --
 21 Q. Shows that it actually was shipped?
 22 A. And what -- and in addition to that
 23 what it shows is that the code date is
 24 also on the bill of lading, so we
 25 actually have a document that shows

1 A. The -- yeah, the deluxe is -- yeah,
 2 it's whole muscle. It's not -- there's
 3 whole muscle in it. It's not of the
 4 same quality level as the other two.
 5 Q. Okay. I see quantity ordered 300 of
 6 the 50044?
 7 A. Right.
 8 Q. And I don't understand, it has cost
 9 2.540.
 10 A. \$2.54.
 11 Q. So how much product -- what's the cost
 12 for that product?
 13 A. Say \$2, let's say.
 14 Q. Two and a half dollars and they ordered
 15 300 pounds, or what does that mean?
 16 A. That's 300 cases.
 17 Q. 300 cases.
 18 A. They're asking us for 300 cases. All
 19 of that is in quantity ordered. That's
 20 an 18-pound case, so they're asking us
 21 for -- help me with my math -- 5400
 22 and something, 5500 pounds.
 23 Q. So they have ordered 5500 pounds of the
 24 honey mesquite turkey breast?
 25 A. Right.

1 that, for instance, down here, let's
 2 say, on that 50304 it says -- when it
 3 says 50304-01 --
 4 Q. Right.
 5 A. -- and the 400 cases.
 6 Q. Okay.
 7 A. I'm sorry.
 8 Q. Yeah, don't mark, but it's the second
 9 to the last column there.
 10 A. Right. Right. And it says code date
 11 6/23/97.
 12 Q. Okay.
 13 A. Which would be going back to 000113.
 14 Q. Right.
 15 A. Would be product that is packed on 4/29.
 16 Q. I see that.
 17 A. Which, if you go back to document
 18 000111 --
 19 Q. Okay.
 20 A. -- would be product that went through
 21 the Unitherm on 4/29. So this -- this
 22 400 cases represents the 50304's that
 23 went to -- went to Fleming Lincoln on
 24 May 6th of 1997.
 25 Q. Okay. And, as it says here, was

1 actually sold to that company.
 2 A. Right.
 3 Q. And it was received by that company on
 4 May 6th of 1997, is that correct?
 5 A. That is correct.
 6 Q. And that link that you have just made,
 7 that would also hold true, would it
 8 not, for product number 50044 on that
 9 list, the bill of lading?
 10 A. It would also go for 50044, that would
 11 be correct.
 12 Q. Both of those are a precooked whole
 13 muscle turkey product?
 14 A. Right. Yeah, and the 62497.
 15 Q. Any other products?
 16 A. 88's was product that was produced on
 17 the rapid flow the day after the 623's,
 18 so --
 19 Q. Okay.
 20 A. -- you know, there's --
 21 Q. How many of the products on that bill
 22 of lading were precooked whole muscle
 23 meat turkey products that were
 24 processed through the rapid flow?
 25 A. The 50304's, the 88's, and the 44's, so

1 basically about -- about just shy of
 2 12,000 pounds.
 3 Q. What's the last page there? Any of
 4 that product processed through the
 5 rapid flow?
 6 A. No. The 50304's might have been, but
 7 you'd have to get a whole bunch of
 8 other documents to --
 9 Q. Okay.
 10 A. But the bologna and the pastrami and
 11 all those others, that's just the
 12 completion of the order. Those did not
 13 -- did not go through this process.
 14 Q. What about the next document? What's
 15 that 000118?
 16 A. This is the actual invoice, basically.
 17 This is the confirmation, the sales
 18 confirmation back to us that it did
 19 indeed ship. This is the bill of
 20 lading, the document that would be used
 21 as the receiving document.
 22 Q. When you -- let's go through. When you
 23 say "this" you put your hand first on
 24 the --
 25 A. 1115.

1 Q. Okay.
 2 A. That is basically -- the bill of lading
 3 comes first.
 4 Q. All right.
 5 A. And once the bill of lading comes
 6 first, you know, that's the document
 7 which basically -- that we have and on
 8 arrival they will sign.
 9 Q. All right.
 10 A. The customer. This right here is a
 11 confirmation back to -- back to our
 12 accounting group.
 13 Q. When you say "this right here," you're
 14 referring to the --
 15 A. Right.
 16 Q. -- turkey --
 17 A. The sales confirmation.
 18 Q. -- sales confirmation?
 19 A. After the bill of lading is put
 20 together than a confirmation is sent,
 21 yes, this did indeed -- was put
 22 together and it did ship.
 23 Q. Okay.
 24 A. And what we do is we come back to our
 25 broker and our customer, we relieve our

1 inventory out of this, our physical not
 2 our accounting inventory. It's
 3 basically an internal document to all
 4 parties that we've received your P.O.,
 5 we've filled your P.O.
 6 Q. All right. And then this last document
 7 we've talked about 000118, that's
 8 actually -- that actually represents
 9 the price that needs to be paid?
 10 A. Right. This is the actual invoicing.
 11 This is the actual invoicing.
 12 Q. What's the date of that invoice?
 13 A. The date of that invoice is 5/05, so
 14 we'll cut the invoice at the time the
 15 bill of lading is -- because it's going
 16 to deliver on the 6th.
 17 Q. Okay.
 18 A. We loaded it and shipped it on the 5th
 19 to get up to Lincoln, Nebraska, we cut
 20 the invoice on the day that we shipped
 21 it, and we basically are saying to them
 22 that you're money is due. You owe us
 23 \$33,629.94 and we need the money by May
 24 15th of 1997.
 25 Q. Okay. What product was -- identify for

1 us, sir, if you would, the product
 2 invoiced and the amount that was the
 3 precooked whole muscle turkey product
 4 that was sent through the rapid flow.
 5 A. For sure I can tell you that the 300
 6 cases of 44's at \$13,405.82 ran through
 7 the Unitherm process.
 8 Q. Okay.
 9 A. The 88's, the cajun spice, 12 cases for
 10 \$457.61 went through there, and 400 of
 11 the 450 304's, so roughly 90 percent of
 12 13,904.
 13 Q. All right.
 14 A. You know, without having the other
 15 documents I can't conclusively tell you
 16 about 50 of them, but I can tell you
 17 400 did.
 18 Q. Okay. What's the page that accompanies
 19 that, that's attached, the next page
 20 behind that? Any other product, by the
 21 way? I'm sorry, was there any other
 22 product on that invoice?
 23 A. No, those were the products.
 24 Q. All right.
 25 A. So roughly, approximately \$25,000 of

1 (Off the record)
 2 (Back on the record)
 3 Q. The next document is Bates stamped
 4 000121.
 5 A. Yeah.
 6 Q. May 19, 1997 memo from Jim Overstreet
 7 to Phil Weiner. Or, excuse me, from
 8 Weiner to Overstreet.
 9 A. Weiner.
 10 Q. Who's Overstreet again?
 11 A. Jim Overstreet was in charge of -- at
 12 that point in time Joe Thompson left
 13 and Jim Overstreet, a long time
 14 manufacturing employee of ours, took
 15 over both of the plants.
 16 Q. Okay. And I note here it has Roman
 17 numeral one, Jefferson Street Plant.
 18 By the way, it deals with the plant
 19 visits on May 13th to 15th, '97, is
 20 that correct?
 21 A. Yes, sir.
 22 Q. And it has Jefferson Street Plant and
 23 below it Rapid Flow System?
 24 A. Right.
 25 Q. And it says below that -- could you

1 this invoice ran through the Unitherm.
 2 Q. Okay. And what's this next document
 3 that's titled Shipment Log?
 4 A. These are the -- these are our internal
 5 shipping records that tell us who
 6 shipped it.
 7 Q. Kind of a reverification --
 8 A. Right.
 9 Q. -- of the bill of lading?
 10 A. Right. So the carrier this went out
 11 on, this went out on Hudson NE at
 12 20:46:53.
 13 Q. Okay, and this went --
 14 A. This particular product invoice we
 15 shipped off of our own trucks.
 16 Q. And this is the product that went to
 17 the Fleming Lincoln facility?
 18 A. Yes.
 19 Q. And it has the 50044's --
 20 A. Right.
 21 Q. -- that you previously testified to?
 22 A. Right. The 88's and the --
 23 Q. Okay.
 24 A. Can we go off the record for a second?
 25 Q. Yeah.

1 read that for us, what it says after
 2 that?
 3 A. Starting with one?
 4 Q. Yeah, number one.
 5 A. "Present system of pre-drying/warming
 6 surface in Alkar oven, drenching with
 7 smoke, heat setting in rapid flow oven
 8 and cooling is working good. Product
 9 color looks excellent. The color has
 10 the golden, reddish brown tones at an
 11 intensity that makes the products stand
 12 out. This color is much better than
 13 the real dark color I saw last month.
 14 Different products have their
 15 characteristic color. You are helping
 16 fix color by using the freezer to
 17 remove most of the surface heat."
 18 Q. Would it be fair to say that at this
 19 time the oven was -- and the process
 20 that Unitherm sold to Hudson was
 21 working as you expected?
 22 BY MR. KROLL: Objection
 23 as to form.
 24 A. Yes. That's what this document says.
 25 Q. (By Mr. Castro) Okay. Sir, let's go

1 now to Bates stamp 000129, if you
 2 would. By the way, you've been in the
 3 industry really most of your adult
 4 life, haven't you?
 5 A. Yes, sir.
 6 Q. And worked in it since -- and actually
 7 through college and after college?
 8 A. Yes.
 9 Q. In mid 1990's, '95, '96, was the
 10 industry experiencing a significant
 11 growth in the turkey industry?
 12 A. We -- the mid '90's were tough
 13 financial years for my industry.
 14 Q. Okay.
 15 A. Growth had slowed and profitability was
 16 not where we'd like to see it, which,
 17 you know, was one of the reasons why we
 18 pushed so hard on this project.
 19 Q. Yeah. And what I meant to really ask
 20 was did turkey kind of take off as a
 21 product that the consumer really wanted
 22 to use?
 23 A. In the '80's.
 24 Q. In the '80's?
 25 A. In the '80's, yes. There was

1 tremendous growth in per capita
 2 consumption.
 3 Q. Okay.
 4 A. Which slowed in the late -- and
 5 actually the '90's that you had talked
 6 about were years where we suffered from
 7 over-production due to trying to meet
 8 that demand that occurred in the mid
 9 '80's.
 10 Q. All right. Let me go first to actually
 11 000136. That is a document produced by
 12 your company. What does that document
 13 represent?
 14 A. That represents the sales dollars of
 15 products that we ran through -- that
 16 for sure ran through the rapid flow.
 17 Q. So that I understand you, when you look
 18 at the product code to the left, all of
 19 that product was produced through the
 20 Unitherm system?
 21 A. Yes, with the exception of -- it has
 22 all of the first quarter of 1997, so --
 23 for this particular product, so all of
 24 1998 would run through the rapid flow.
 25 The majority of '97 I gave -- this

1 represents all of '97. The January,
 2 February, and part of March numbers
 3 would not run through because we didn't
 4 get the rapid flow up and going until
 5 February of 1997, so --
 6 Q. Okay.
 7 A. -- yeah, not all of 1997, but the
 8 majority of 1997.
 9 Q. All right. And so I see here, for
 10 example, 50044, which is that mesquite.
 11 What is the product called, is it the
 12 honey mesquite?
 13 A. Right.
 14 Q. And that product, is that precooked
 15 whole muscle turkey product?
 16 A. Yes, it is.
 17 Q. Okay. Now I'll refer now, sir, to
 18 document 000129. Do you recall
 19 receiving that letter?
 20 A. Yeah. Yeah, I do remember seeing this
 21 letter.
 22 Q. All right, sir. Would you identify
 23 that letter for the jury by date?
 24 A. This is a letter dated -- from ConAgra
 25 Refrigerated Foods dated February 28th

1 basically telling me that they have a
 2 patent on a process and that they
 3 intend to aggressively protect their
 4 rights under the patent, and if I had
 5 an interest in discussing the
 6 application of this patent process
 7 please contact them to discuss.
 8 Q. Let me read this first paragraph. It
 9 says, first it says, "Dear Mr. Briggs,"
 10 and it goes on to say, "This letter is
 11 to inform you of the recent issuance of
 12 our U.S. Patent No. 5,952,027, entitled
 13 "Improved Method for Browning
 14 Precooked, Whole Muscle Meat Products."
 15 A copy of the patent is enclosed."
 16 A. Uh-huh. Right.
 17 Q. Did you get the patent? Did you see
 18 that patent?
 19 A. Yeah, I did. I did. I did receive
 20 the patent.
 21 Q. Is the process that Unitherm sold to
 22 your company, is that what's set forth
 23 in this patent?
 24 BY MR. KROLL: Objection
 25 as to form.

1 A. The patent is the process that we
 2 purchased or the process that we
 3 utilize in the Unitherm, but in reading
 4 this patent it almost is so broad that
 5 it almost reads as if they are
 6 patenting, you know, product that was
 7 cooked in the Alkar and stripped and
 8 that you go back into the Alkar. I
 9 mean, it's almost patenting a process
 10 that's been out there for 7000 years,
 11 since the, you know, cavemen --
 12 Q. (By Mr. Castro) Well, let me read you
 13 the abstract and -- for you. It says,
 14 "A method of producing a crisp surface
 15 and imparting a uniform golden brown
 16 color to a precooked whole muscle meat
 17 product by coating at least a portion
 18 of the surface of the precooked whole
 19 muscle meat product with a browning
 20 liquid pyrolysis product. The coated
 21 surface is then exposed to an energy
 22 source that selectively heats the
 23 coated surface of the whole muscle meat
 24 product at a temperature and for a time
 25 sufficient to develop a golden brown

1 product onto at least a portion of the
 2 surface of a precooked whole muscle
 3 meat product and then exposing the
 4 coated surface to an energy source and
 5 selectively heating" -- mine's not very
 6 good, what does that say?
 7 A. Heating.
 8 Q. "Heating the coated surface of the
 9 whole muscle meat product at a
 10 temperature and for a time sufficient
 11 to develop a golden brown color on the
 12 exposed surface without substantially
 13 shrinking the precooked whole muscle
 14 meat product."
 15 A. Right.
 16 Q. Is this the same process that Unitherm
 17 sold to Hudson Foods?
 18 BY MR. KROLL: Objection
 19 as to form.
 20 A. Yes.
 21 Q. (By Mr. Castro) And so there's no
 22 misunderstanding, would you agree that
 23 Unitherm sold you both an oven and a
 24 process, a process by which to utilize
 25 the oven?

1 color on the exposed surface without
 2 substantially shrinking the precooked
 3 whole muscle meat product." Now, is
 4 that the process that Hudson purchased
 5 from Unitherm?
 6 BY MR. KROLL: Objection
 7 as to form.
 8 A. Yes, it is.
 9 Q. (By Mr. Castro) And, sir, is that the
 10 process that Hudson, now Willow Brook --
 11 A. Right.
 12 Q. -- uses to prepare certain meet
 13 products that it sells to the ultimate
 14 end user?
 15 A. Yes, it is.
 16 Q. And I'll read to you the claim number
 17 one. Why don't you go to page -- and
 18 it's actually at the top, it says
 19 eight, and it would probably be about
 20 the fifth page, but it's at the top of
 21 eight. Do you see that? And it says,
 22 let me read this, it says, "I claim:
 23 1. A process for browning precooked
 24 whole muscle meat products comprising:
 25 coating a browning liquid pyrolysis

1 BY MR. KROLL: Objection
 2 as to form.
 3 A. Yes.
 4 Q. (By Mr. Castro) Now after --
 5 BY MR. KROLL: Are you
 6 finished?
 7 Q. (By Mr. Castro) Oh, I'm sorry. Are
 8 you done?
 9 A. They, Unitherm -- Unitherm sold a
 10 system by which we could deliver the
 11 process. You know, I think it was a
 12 collaborative effort by all the
 13 parties. Yeah.
 14 Q. Okay. After this February 28th letter,
 15 which is Bates stamped 000129, did you
 16 speak to Mr. Salm?
 17 A. Pardon me?
 18 Q. Oh, that's all right. This letter,
 19 when we go to the letter --
 20 A. Oh, okay. Okay. Okay.
 21 Q. Did you have an opportunity to talk
 22 with Mr. Salm?
 23 A. You know, I think I picked up the phone
 24 and did call him, and, to the best of
 25 my knowledge, I called. I'm not sure

1 if I got him or -- I mean, we talked
 2 very briefly and it was basically, you
 3 know, you need to -- you need to stop
 4 using this process.
 5 Q. Well, did he ever tell you that he'd
 6 like to sell you a license?
 7 A. No. No.
 8 Q. What --
 9 A. No, it was basically I called, don't
 10 know if he was in, I can't remember if
 11 I got him the first time, he told me
 12 that, you know -- and, no, he did not
 13 -- you know, he did not say anything
 14 about licensing.
 15 Q. What was your opinion when you received
 16 this letter? And by that, what did you
 17 think of the letter and the patent?
 18 A. Well, when I first got it, you know, I
 19 read it and I said, well, you know,
 20 this is something that is ludicrous, I
 21 mean, is what I thought to myself. And
 22 not knowing anything about patent law I
 23 was very, very shaken from the
 24 standpoint of, you know, my sense of
 25 justice was, you know, totally -- that

1 somebody, you know, three years later
 2 who probably saw it at a trade show
 3 somewhere decides that they're going to
 4 make themselves a hero by putting
 5 together a patent, and so I was like,
 6 you know, one, upset and shaken a
 7 little bit, but, on the other hand, I
 8 was like, well, everybody else in the
 9 industry has one of these things in
 10 their plant now, and certainly the
 11 industry isn't going to allow this
 12 thing to stand.
 13 Q. Now, did you -- and I don't want to
 14 invade your attorney/client privilege
 15 here, but did you call your lawyer and
 16 do you know whether your lawyer -- did
 17 your lawyer ever hear back from ConAgra
 18 after this letter?
 19 BY MR. KROLL: Objection
 20 as to form.
 21 Q. (By Mr. Castro) Yeah. First let me
 22 ask do you know whether your counsel
 23 ever spoke to ConAgra or attempted to
 24 communicate with ConAgra?
 25 A. Without -- can I step back and --

1 Q. Sure.
 2 A. I didn't -- I didn't have counsel in
 3 this matter, so I got with my parent
 4 company --
 5 Q. Okay.
 6 A. -- and sent this letter, and they
 7 employed Charlie to represent us. And
 8 that's how Charlie and I met was
 9 through that. Well, Charlie came and,
 10 you know, did his investigation, his
 11 job --
 12 Q. Okay.
 13 A. -- and basically I explained to him
 14 that, you know, we've been doing this a
 15 long time, we did all of these things,
 16 and I -- the records that you see today
 17 are records that I put together for
 18 Charlie to say, you know, how can they
 19 do this when I was already -- I already
 20 had this thing produced, you know,
 21 produced, shipped to, and I already had
 22 my money, you know, what, two, three
 23 years from them, you know, giving me
 24 this document.
 25 Q. Okay.

1 A. And so I was just kind of "How can
 2 they do this?"
 3 Q. Did your -- do you know whether your
 4 lawyer ever tried to communicate with
 5 ConAgra?
 6 A. After -- I think he tried three or four
 7 times, I think.
 8 Q. Do you know whether he's attempted to
 9 communicate with ConAgra regarding the
 10 patent?
 11 A. Yes, I do. He has told me that he has
 12 tried to on numerous occasions.
 13 Q. Has he ever been successful in
 14 receiving even as much as a return
 15 phone call from ConAgra that you know
 16 of?
 17 A. I don't -- there may have been one, but
 18 I don't think that there's been more
 19 than one.
 20 Q. Okay.
 21 A. That I'm aware of.
 22 Q. You mentioned trade show, and I'm not
 23 sure what the next number is but let me
 24 get this out of the way. You probably
 25 want the one that's not highlighted. A

1 letter of January 17th, 1997 from
 2 Unitherm to you. Have you ever seen
 3 that document before?
 4 A. Yes.
 5 Q. What number are we on, #6? And is that
 6 simply an invitation for you to go to a
 7 trade show and look at the process?
 8 A. Yeah.
 9 Q. Okay. And I'll hand you what I'll mark
 10 as -- I'm sorry, go ahead. Is there
 11 something?
 12 A. Yeah, to look at the process. But
 13 you've got to remember January 17, 1997
 14 we had already purchased ours.
 15 Q. Right. Right.
 16 A. Okay.
 17 Q. But you mentioned trade show --
 18 A. Yeah. Yeah. This was out there for
 19 the world to see.
 20 Q. And #7 I'll hand you, and I'll ask if
 21 you've ever seen that document. That
 22 document, sir, is a July 8th, 2000
 23 letter from Dennis Gott,
 24 Vice-President, General Counsel and
 25 Secretary for ConAgra Refrigerated

1 I've talked with Mr. Castro about this
 2 and he's agreed that even though it's
 3 stated as a subpoena duces tecum it is
 4 also to include a subpoena to have your
 5 deposition taken, is that correct?
 6 A. Correct.
 7 Q. And as far as the categories on which
 8 you are testify, the categories that
 9 were identified in your notice of
 10 deposition would apply to this subpoena
 11 as well.
 12 A. That's correct.
 13 Q. And a second housekeeping item is that
 14 we noticed in some of the documents of
 15 Exhibit #3 that some documents are
 16 attached when perhaps they should not
 17 have been, or it's unclear whether or
 18 not they are related to each other, and
 19 that just because they're attached
 20 there's no belief that they are
 21 supposed to be attached.
 22 BY MR. HANOR: Unless we've
 23 testified to the fact that they are
 24 together.
 25 BY MR. KROLL: That's fine.

1 Prepared Foods to you, purportedly to
 2 you re: Patent License. That is a
 3 Bates stamp CRPF05140, which to you
 4 doesn't mean anything but it means it
 5 was a document that was produced to us
 6 by ConAgra.
 7 A. Uh-huh.
 8 Q. Have you ever seen that document?
 9 A. I saw it for the first time about 1:30
 10 today.
 11 Q. So you don't recall ever receiving this
 12 July 8th, 2000 letter?
 13 A. I never got this letter. It was until
 14 Charlie gave it to me today. I had
 15 never seen this.
 16 Q. Let's take a five-minute break.
 17 (Off the record)
 18 (back on the record)
 19 CROSS-EXAMINATION BY MR. KROLL:
 20 Q. The first thing is a housekeeping item,
 21 which is you are here as the result of
 22 an amended subpoena duces tecum that
 23 was served on you by plaintiffs in this
 24 case, which actually is a subpoena
 25 duces tecum just to produce documents.

1 BY MR. CASTRO: Let me
 2 clarify. Some of us received those
 3 documents stapled and others didn't, so
 4 yeah, to the extent he testified that
 5 they were intended to be together....
 6 BY MR. KROLL: That's fine.
 7 Q. (By Mr. Kroll) Let me ask you some
 8 questions. My name is Howard Kroll and
 9 I represent ConAgra Refrigerated Food
 10 Products. What -- did you review any
 11 documents in preparation for this
 12 deposition?
 13 A. Review any documents in preparation?
 14 No. In fact, Charlie and I talked for
 15 10 minutes before. He came in, my
 16 secretary picked him up, I had a board
 17 meeting, I came over here, it was 1:15,
 18 you know, I apologized for my
 19 hospitality and, you know -- but these
 20 documents are the documents that have
 21 been in my file for, you know, all
 22 these years.
 23 Q. Prior to 1:30 when the deposition
 24 began, did you have any conversations
 25 with Mr. Castro regarding this

1 deposition?
 2 A. No. No.
 3 Q. Prior to 1:30 today did you have any
 4 discussions with Mr. Howard regarding
 5 this deposition?
 6 A. No.
 7 Q. Have you had any discussions with Mr.
 8 Howard regarding the lawsuit that
 9 Unitherm and Jennie-O has brought
 10 against my client?
 11 A. The -- Mr. Howard and I have discussed
 12 this lawsuit, you know, when I first
 13 got the letter, the one I did see.
 14 Not the one with the 10-cent royalty,
 15 the one that says that we're going to
 16 protect this thing. And, you know, I
 17 talked to him then and then I talked to
 18 him again at some later date. And I
 19 hadn't heard anything and that's when
 20 Charlie hadn't been able to get in
 21 contact with him, so, you know, I went
 22 about my merry business and I happened
 23 to, I think -- I think David called me
 24 wanting to know if I had any interest
 25 in a post-pasteurization piece of

1 Q. So it seems like there are two
 2 conversations that you've had with
 3 David Howard. One is when you received
 4 the letter from Chris Salm regarding
 5 the patent, and the second is when he
 6 called you up to discuss this
 7 pasteurization process.
 8 A. Right.
 9 Q. Is there any other conversation you've
 10 had with David Howard regarding this
 11 litigation or the patent?
 12 A. Not with David. You and I have had a
 13 conversation, but not with David.
 14 Q. Okay. When did you have a conversation
 15 with Mr. Castro regarding this
 16 litigation or the patent?
 17 A. I've had two conversations that I can
 18 recall with Mr. Castro. He called me
 19 up, we had a general conversation of
 20 the issue, you know, kind of -- he was
 21 made aware by David that I had certain
 22 documents and he explored, you know,
 23 what I had. I told him that -- that,
 24 you know, I had -- that Charlie was my
 25 attorney, you know. I had a pretty

1 equipment that he was working on, and
 2 then I asked him about -- either he
 3 asked me or I asked him about whatever
 4 happened with the ConAgra patent, and I
 5 was somewhat surprised that Jennie-O
 6 was doing the -- I guess it's suing, I
 7 don't know what the correct word is,
 8 litigating this. And, you know, I
 9 don't even know on what grounds or,
 10 you, know, I have no idea. All I know
 11 is that I said to David, I said, well,
 12 based upon what my attorney has said to
 13 me, based upon the documentation that I
 14 have, that this patent is invalid. And
 15 I said so from that standpoint, you
 16 know, I'm doing my, you know, I'm doing
 17 my business and I've got enough to
 18 worry about. And so that is when David
 19 knew that I had these documents and
 20 that was that. I didn't do anything
 21 other than -- I can't even tell you
 22 what date that was. I can tell you
 23 what date Charlie was here.
 24 Q. I'm not interested in that.
 25 A. Right.

1 conversation with him but I also said
 2 that, you know -- you know, you guys
 3 that know this need to talk because I
 4 don't know this. You know, I only know
 5 -- and then I had a second conversation
 6 with him when he wanted to know kind of
 7 some names of some people who -- I
 8 think what he actually said to me was,
 9 "How did you hear about this process?"
 10 and I said through these individuals.
 11 I said I really wasn't, you know, at
 12 that level of detail at that particular
 13 time. You know, once we went and got
 14 into the process then, but the ideation
 15 was at a lower level. So I gave him
 16 some names of some people, particular
 17 Tony Muller, where he was.
 18 Q. Do you recall any other individual
 19 whose name you gave to Mr. Castro?
 20 A. Phil Weiner. I gave him Phil Weiner
 21 and Tony Muller. Those were the only
 22 two that I could really think of.
 23 Q. And Tony is with Protein Technologies?
 24 A. Protein Technologies.
 25 Q. Where is that located?

1 A. It's in St. Louis. I think it's part
2 of a much larger company like Dow or,
3 you know, some genetic, agricultural
4 genetic --
5 Q. And where is Dr. Weiner?
6 A. Dr. Weiner is in Grand Rapids,
7 Michigan, and he is -- he is a
8 consultant. He's self-employed.
9 Q. Okay. Let me go back to the
10 conversations you had with David Howard.
11 A. Right.
12 Q. The first one being when you received
13 the letter from Chris Salm. And you
14 called him up, is that correct?
15 A. Yeah. I don't know if I called him up
16 or he called me up. I can't recollect
17 that. But one of us initiated this
18 phone call, and I can't remember which
19 way it went. I almost remember -- I
20 almost remember that maybe it was him
21 calling me. It might have been him
22 calling me.
23 Q. And do you recall the substance of your
24 conversation, that first conversation?
25 A. Yeah. I think the way -- I think the

1 didn't think the world could be that
2 unfair, so I figured I had something
3 here.
4 Q. How long was this conversation with
5 David Howard?
6 A. It really wasn't too long. I mean,
7 David and I are not, you know, we're
8 not good friends in any means. In
9 fact, you know, we're very amiable,
10 but, you know, that last little bit
11 there in April, you know, of '97, you
12 know, he wanted to get going and I
13 wanted him to stay, you know. And I
14 can understand his point and he can
15 understand my point, you know. He
16 wanted to go sell more ovens and I
17 wanted the one that I -- working
18 perfectly. And, you know, we ended up
19 splitting the baby, you know. He took
20 a piece of it and I took a piece of it
21 and I said, well, I'll do the rest, you
22 know, and you can go do what you need
23 to do and I can do what I need to do,
24 so....
25 Q. We'll get to that later.

1 way it went was that he called me and
2 asked me if I had received this letter,
3 and because other people had received
4 this letter. And I said I did receive
5 this letter and I said, you know, I'm
6 working through it with my attorney.
7 And at that point in time, you know, I
8 was really, you know, really, you know,
9 until I talked to my attorney about
10 what all this means and can figure out
11 what it is, that, you know, I'm not
12 going to, you know, get overly -- I was
13 overly excited, you know, but I was
14 trying to remain calm and, you know,
15 work through this and not jump off the
16 deep end and, you know rant and rave
17 about something or, you know, get
18 ConAgra -- or Carolina Turkey or
19 Cargill or some other people that I
20 knew that, you know, had the process.
21 You know, my thing was, you know, let's
22 see what, you know, people who know
23 about this, especially based upon the
24 evidence that I knew I had, I just, you
25 know, like I said earlier, I just

1 A. Okay. Yeah. But, yeah, I mean, we're
2 not -- I guess what I'm saying is from
3 a historical basis, I mean, there
4 wasn't a deep friendship between us.
5 Q. What was Mr. Howard's reaction to the
6 fact that you had received this letter?
7 A. He was -- you know, he was not happy,
8 you know.
9 BY MR. CASTRO: By the
10 way, are we reserving all objections
11 except to the form of the question till
12 time of trial, Howard?
13 BY MR. KROLL: I assumed
14 that that's what --
15 BY MR. CASTRO: Okay, as
16 long as we are under that agreement.
17 Go ahead.
18 A. Yeah. How was he? I mean, he gave no
19 --
20 BY MR. CASTRO: I'll still
21 object to the form of the question,
22 though, but go ahead.
23 A. The -- he gave me some history. He
24 gave me some history about his process
25 and ConAgra.

1 Q. (By Mr. Kroll) This was all during the
2 first conversation?
3 A. Yeah. It was kind of like somehow we
4 ended up -- either he called me or I
5 called him. I can't remember which.
6 It was to the effect of "Can you
7 believe this letter exists?" And then
8 he went through, you know, his history
9 to me, and I said to him, I said, you
10 know, "I basically have turned it over
11 to my attorney," I said, but you know,
12 "David, you know as well as I do that,
13 you know, we were using this process
14 and all of these things." And I said,
15 you know, "I've got documentation and
16 all these other things relative to
17 being in production." And I said,
18 "There's no way that this thing -- that
19 they have a right to this." And at
20 that point in time, I had not talked to
21 my attorney, and at that point in time
22 I really didn't want to make any
23 commitments to anyone about anything.
24 You know, I was really trying to --
25 trying to, you know -- you know, I

1 had been into and proposed to them this
2 system to do this application, and had
3 not -- I can't remember if he said he
4 had not been successful or he couldn't
5 get anywhere or whatever, but it was
6 basically making the point that --
7 which I was a little bit taken aback
8 because, of course, I was like you went
9 to these guys first, so, but anyway,
10 that was the extent of the
11 conversation. But what -- I was
12 purposely trying to keep a little bit
13 of distance between me and David from
14 the standpoint of, you know -- you
15 know, I didn't want to get wrapped up
16 into spending a bunch of money. I
17 mean, it was 2000, we'd been our own
18 company for a year and a half, and I
19 only wanted to get dragged into it if I
20 had to be. So I was trying to, you
21 know, lay in the woods a little bit and
22 -- and, you know -- and that's really
23 what I did.
24 Q. Did Mr. Howard ask you to join him in
25 his lawsuit?

1 really felt like I could defend myself
2 and I don't need to hop into David's
3 camp or hop into anybody else's that
4 came to me because I felt like on the
5 basis of pure documentation and
6 fairness that we would be able to -- we
7 would be able to, you know, save the
8 day, so to speak.
9 Q. Could you describe what Mr. Howard said
10 to you about the history of the process?
11 A. He said to the effect that he had been
12 in there at some date prior, maybe as
13 much as -- I can't remember if it was
14 two years before or maybe even four
15 years before. I can't remember what it
16 was, but it was a period of time
17 substantially before we got together in
18 mid-1996. I can't remember what that
19 date, but it was, you know, it was a
20 date, you know, much earlier. And he
21 said that he had proposed to them --
22 Q. "Them" being ConAgra?
23 A. Yeah. However you define ConAgra,
24 whether it was Butterball or it was
25 Eckridge Refrigerated Foods or -- he

1 A. No, he never asked me. No, he never
2 asked me. He -- and I purposefully
3 tried to, you know -- I purposefully
4 tried to move the conversation away
5 from that to the standpoint of telling
6 him that I had documentation, you know.
7 I said I have proof that we were in
8 this system, you know, way before. And
9 I said I can produce invoices, I can
10 produce, you know, all the things that
11 show that I clearly was in. You know,
12 I, at that point in time, was unaware
13 of any kind of hurdle, you know, or any
14 kind of what constitutes, you know, but
15 I clearly knew that in early spring of
16 '97 that I was shipping product and
17 getting paid for it. And I was trying
18 to use that with David from the
19 standpoint of saying, hey, I don't need
20 to go down this road, you know, I don't
21 need to spend a lot of money, I don't
22 need to spend a lot of time and energy.
23 So he never asked and I tried to make
24 it very clear that I didn't really want
25 to go there.

- 1 Q. Did he tell you during this phone
2 conversation that he was the inventor
3 of this process?
- 4 A. He has never said to me that he was
5 the inventor. I don't ever remember
6 him saying that he was the inventor.
- 7 Q. What did he tell you about ConAgra or
8 Swift-Eckridge, the history of that?
- 9 A. You know, David -- David was shocked,
10 you know, from the standpoint that this
11 had occurred, just like everyone else.
12 You know, just like I was and just, you
13 know, like the majority of the people
14 who had received this letter, you know,
15 that I had the opportunity to talk to,
16 which was maybe two other companies.
17 Cargill and Carolina, they're the two
18 other companies that I talked to about
19 this matter, and really kind of in
20 passing, "Oh, did you get the letter?"
21 you know. And I told each one of them
22 the same story I told David Howard.
23 What is the question?
- 24 Q. You had earlier said that one of the
25 things that David Howard told you was

- 1 the history of the process and ConAgra.
- 2 A. Oh, okay.
- 3 Q. Now we have talked about what he said
4 about the history of the process, and
5 now we're going to go on to ConAgra.
- 6 A. David explained to me his point about
7 the history. David is very political
8 and he realizes that he -- you know,
9 he's not going to -- he wants to sell
10 ConAgra ovens and equipment, so he's
11 not going to badmouth anybody who's a
12 potential supplier of them, and so he's
13 never said anything to the effect of,
14 you know, that wasn't, you know, in a
15 professional manner, I mean, from the
16 standpoint of -- because he's no dummy,
17 he's not going to burn any bridges,
18 but, I mean, he definitely wanted me to
19 know that, you know, he had shown this
20 process to them at some time and it was
21 -- this particular patent was absurd
22 and that if need be he was going to
23 defend his livelihood, you know, and,
24 you know, he didn't say what that meant
25 and I'm not even sure he used those

- 1 terms, but -- and that's where I wanted
2 to back away and say, you know -- and
3 that was that.
- 4 Q. So do you recall anything else in that
5 first conversation?
- 6 A. No, that's really kind of how it all
7 went.
- 8 Q. When he -- when Mr. Howard said that
9 he had shown the process to
10 Swift-Eckridge two years or four years
11 before he showed it to you, did he
12 describe what the process was?
- 13 A. Well, remember he didn't show me the
14 process in 1996. I heard about the
15 process and went to him. You know, he
16 was out showing it to, you know, people
17 like ConAgra and Hormel and, you know,
18 the bigger guys, you know. I happened
19 to be a littler guy who really was
20 fired up about doing this and knew the
21 technology was there and we -- the
22 person with the system and the person
23 motivated to make it work came together.
- 24 Q. Uh-huh.
- 25 A. And that's the way I see it, you know.

- 1 So he may indeed have invented this,
2 but, you know, to say that I wasn't
3 trying to do the same thing and was
4 looking for the equipment or the system
5 to be able to do it, that's why I say
6 it was a collaborative, because I, you
7 know, risked the capital and the time
8 energy to actually put it into
9 application.
- 10 Q. We'll also get to the collaborative
11 nature later when we get to the
12 documents. But, other than what we've
13 discussed with respect to the
14 conversation, the first conversation
15 you had with Mr. Howard, anything else
16 that we haven't talked about?
- 17 A. No, it was -- it was that particular
18 conversation that either he or I
19 initiated and it was relative to this
20 and he gave me the history and I told
21 him about my documentation and told him
22 that my attorney was going to review it
23 and, you know, tried to, you know, stay
24 away from getting involved in a big old
25 ruckus.

1 Q. The second conversation you had you
2 indicated started when Mr. Howard
3 called to try to sell you a
4 pasteurization process?
5 A. Yeah. He has built a pretty slick
6 little pasteurization process, and I
7 knew it was out there and I know one
8 of my competitors had it in and I told
9 one of my guys to call David and to,
10 you know, see if we can take a look at
11 it or come down to Ponca City or
12 something like that, and David called
13 me shortly after my guys talked to him
14 and he, you know, was saying something
15 to the effect that, you know, you can
16 come see it or we can go do this or,
17 you know, you can either go to Cooper
18 and look at it or you can come to my
19 shop, you know, basically trying to get
20 me involved. And, you know, I'm trying
21 to get my guys to do all the grunt work
22 and, you know, he's knowing that if he
23 can sell me then it's going to get
24 done. And I think I said to him, you
25 know, "Have you heard any more about

1 litigated, you know, from the
2 standpoint of Charlie hadn't heard
3 anything, I hadn't gotten any other
4 letters, you know, I thought that this
5 thing was like a bad dream, you know.
6 I was thinking that it was going away,
7 you know. And so from that standpoint,
8 you know, after what Charlie had told
9 me and the advice that he had given me,
10 you know, I thought that I had done
11 everything within my power to respond
12 to ConAgra, you know, both by calling
13 this guy initially and having Charlie
14 try to get to the point where I felt
15 like, you know, I'd given a good faith
16 effort to try to respond to this and,
17 you know, if nothing's going to come of
18 it then I'm not going to go over and
19 kick a dead dog, you know, kind of
20 thing. So, I was surprised when I
21 talked to David that it was still an
22 issue, is what surprised me. Jennie-O,
23 I mean, that wasn't what surprised me.
24 What surprised me was still, you know,
25 still on the burner, so to speak.

1 this?" and that's when I became aware
2 that -- and I can't even tell you when
3 this was, but that's when I became
4 aware that he and Jennie-O were
5 involved in some sort of litigation,
6 and I basically told him, I said, "I
7 have talked with my attorney, we have
8 reviewed the documents, and my attorney
9 has told me that based upon the fact
10 that I had documents showing that I was
11 in commerce one year before the patent
12 was filed that the patent was invalid."
13 And so I said, "As far as I'm
14 concerned, this matter is moot to me."
15 Q. Did this -- I'm sorry, were you
16 finished?
17 A. No, go ahead.
18 Q. Was this second conversation sometime
19 this year, 2001?
20 A. I believe that it was early in 2001.
21 Q. You earlier had said that you were
22 surprised that Jennie-O was litigating
23 this. Why were you surprised?
24 A. Well, I mean, I was surprised. I was
25 surprised just to hear that it was

1 Q. Other than these two conversations with
2 Mr. Howard, any other conversations
3 that you've had before today with him
4 regarding the patent or this litigation?
5 A. No. In fact, the only other
6 correspondence that I've had with David
7 is he sent me a fax about three weeks
8 ago requesting or asking permission to
9 put four pieces of my product in his
10 booth at AMI, and I communicated back
11 with him by fax "Tell me when and
12 where" and I -- I just said, "No
13 problem, tell me when and where," and
14 that's the only other communication
15 I've had with him.
16 Q. With respect to the -- let's back up.
17 The second conversation with Mr. Howard
18 --
19 A. Right.
20 Q. -- was there anything else discussed?
21 A. No, other than -- other than I
22 explained to him that I had this
23 documentation and that as far as I was
24 concerned that -- you know, I didn't
25 offer anything up or anything like that

1 that I can remember, but I was very,
2 very up front with him saying, you
3 know, I have this, I've spoken to my
4 attorney, and -- and still, I'm in the
5 same vein of, you know, I don't need to
6 go looking for things to do, you know.

7 Q. All right. Now, some background
8 regarding you. You are not a patent
9 attorney, correct?

10 A. No. No.

11 Q. You're not an attorney?

12 A. No.

13 Q. You're not an engineer in any way?

14 A. No.

15 Q. Do you know what pyrolysis is?

16 A. I had never heard of the word until I
17 read the patent. I mean, I may have
18 seen it, but, you know, I know what
19 liquid smoke is and I know what a
20 browning agent is.

21 Q. Do you know what a pyrolysis browning
22 agent is?

23 A. I'm not sure I know exactly what that
24 is today. I mean, I couldn't give you
25 a definition. I assume, you know, but

1 or David or both or what, you know, but
2 -- and I was just as up front as I was
3 to David, yeah, I do have these
4 documents and, you know, this is kind
5 of where we're at, you know, and we,
6 you know, we bought this, we produced
7 in it, we sold it and were paid for
8 before, you know, before this patent
9 was filed, a year before this patent
10 was filed. And, you know, he asked me,
11 you know, questions relative to, you
12 know, how I found out and all these
13 other things and I basically said, you
14 know, the first time that I met David
15 was the day I gave him the P.O.

16 Q. Do you recall when that conversation
17 took place?

18 A. I want to say that -- I don't keep
19 that kind of data, but I want to say
20 it was maybe late spring or early
21 summer months, somewhere in there.

22 Q. Was there anything else discussed in
23 that telephone conversation?

24 A. I told him at that point in time -- I
25 told him at that point in time that the

1 I don't -- I mean, I didn't go look it
2 up in the dictionary and I guess --

3 Q. That's fine. Are you -- do you
4 typically as part of your job duties
5 read patents?

6 A. Typically no. This is maybe, in my 20
7 years of being in this industry, maybe
8 the second or third patent that I've
9 looked at. I mean, you know, like any
10 other legal document it takes quite a
11 bit, you know, to sit down and read a
12 patent. This is the first patent I've
13 read front to cover. I think I've
14 reviewed one or two others a long time
15 ago.

16 Q. You indicated you had two conversations
17 with Greg Castro, the first one was
18 just general to find out more
19 information, is that correct?

20 A. Yeah. Greg called me up and -- Greg
21 called and said that he represented
22 David on this particular matter, and I
23 think you also said you represented
24 Jennie-O, which, you know -- and I
25 didn't know if he represented Jennie-O

1 people who would have the information
2 regarding how we found out about it,
3 was Tony Muller and Dr. Phil Weiner. I
4 said -- I had even forgotten about Joe
5 Thompson or that he was even around. I
6 mean, it was not even in my mind
7 anymore. So, if I would have even
8 thought of that I probably would have
9 said or Joe Thompson. I wouldn't know
10 how to track him down, but those two
11 people I knew were involved in it and I
12 knew where they were, and I also told
13 him, at that point in time, that Andrew
14 Cobb and Rodney -- or Rodney -- Robert
15 Brooks, the guy I was just talking to,
16 were intimately involved in everything
17 that had to do with that process and
18 that they were here and he was more
19 than welcome to talk to them about it.

20 Q. Do you know whether or not he has
21 spoken to Andrew Cobb?

22 A. I don't know. I don't know. He may
23 have, me may not have. Usually, you
24 know, if someone was talked to, you
25 know, they'll stick their head in and

1 usually will say, you know, that they
 2 have. I haven't had any of that.
 3 Q. By Andrew Cobb or Robert Brooks?
 4 A. No, not that I'm aware of.
 5 Q. Do you recall any other topic that was
 6 discussed in your conversations with
 7 Mr. Castro?
 8 A. Well, like I said, he called me back.
 9 He called me back, he asked me some
 10 clarification issues, and it might have
 11 been maybe even several weeks later
 12 after our conversation, after our first
 13 conversation, and I told him that -- I
 14 told him that here's how you could get
 15 to Tony and here's how you could get to
 16 Phil Weiner, and at that point in time
 17 I think that I told him that Charlie,
 18 my lawyer, was -- you know, basically
 19 had advised me that I needed to push
 20 him to and work through Charlie.
 21 Q. Uh-huh.
 22 A. And I advised him at that point in
 23 time, I said, you know, I said, "You
 24 know how Charlie is. You now, you need
 25 to work through him." And -- because

1 who was our Director of Marketing, who
 2 reported to me. She reported to him
 3 and she was the person who was -- she
 4 was the person who was put on the
 5 project.
 6 Q. Is she still with the company?
 7 A. No, she is not.
 8 Q. Do you know where she is?
 9 A. She is I believe still somewhere here
 10 in town. She may not be a Thomas
 11 anymore, though, and I don't know what
 12 she is.
 13 Q. Is Kenny Cox still with the company?
 14 A. No, he isn't. Kenny left the company
 15 two weeks ago.
 16 Q. Did he know that we were coming?
 17 A. No. No, he didn't.
 18 BY MR. CASTRO: He knew
 19 you were coming.
 20 A. He got a great opportunity to basically
 21 market research drugs, basically
 22 working with pharmaceutical companies
 23 and research doctors.
 24 Q. (By Mr. Kroll) And where is he located
 25 now?

1 at that point in time I had been pretty
 2 frank and open and Charlie had advised
 3 me that, you know, we might need to be
 4 a little more discrete in what we --
 5 what we say. And I was like "I've got
 6 nothing to hide."
 7 Q. Okay. If you -- let's go off the
 8 record.
 9 (Off the record)
 10 (Back on the record)
 11 Q. Let's go back on the record. Sir, can
 12 you turn to document with Bates stamp
 13 number WB14? I won't do all the zeros
 14 in front of it.
 15 A. Okay. Yeah.
 16 Q. And the subject matter on this memo is
 17 "Shelf life and radiant wall oven team
 18 meeting updates." Do you see that?
 19 A. Right.
 20 Q. First of all, it's prepared by Lisa
 21 Thomas, do you see that?
 22 A. Right.
 23 Q. Who is Lisa Thomas?
 24 A. She was the -- she was the marketing
 25 manager. She reported to Kenny Cox,

1 A. He is here in town. Yeah.
 2 Q. Could you tell me what was the radiant
 3 -- what was the radiant wall oven team?
 4 A. The radiant wall oven team was -- we
 5 were attempting to in-line product
 6 smoke, or basically to do an in-line
 7 process of smoking our product on a
 8 continuous basis. And this project
 9 started out with the radiant wall oven,
 10 was the first thing that we looked at.
 11 At some later date, how the -- someone
 12 knew or had heard or was referred to
 13 that Unitherm maybe had a oven at that
 14 point in time, I heard, an oven that
 15 may do it better than the radiant wall
 16 oven. And I think the first time I
 17 heard about it was in a conversation
 18 with Phil Weiner, because Phil Weiner
 19 and I worked together on the oven that
 20 we built that -- back at Billmar, the
 21 one that roasts, in-line roasted. So
 22 Phil and I -- I basically was the Lisa
 23 Thomas for that oven and Phil Weiner
 24 was the Tony Muller on that project so,
 25 you know, there's --

1 Q. If you turn to the next page, page two.
 2 A. Uh-huh.
 3 Q. Bottom of the page, Bates stamp number
 4 15. It says, "Tony to check with
 5 Hudson's legal department regarding the
 6 patenting of this process for the
 7 products we are pursuing." Do you see
 8 that?
 9 A. Yeah, I do.
 10 Q. Do you know what this was with
 11 reference to?
 12 A. I think this is probably the team
 13 minutes of this, and probably somebody
 14 said, you know, "If we do this can we
 15 patent it?" And Lisa was basically
 16 saying, "Tony, you need to look into,
 17 you know, the patentability of this
 18 process."
 19 Q. And do you know if Tony did?
 20 A. I have no idea.
 21 Q. Okay. When did this radiant wall oven
 22 team begin? Obviously it would have
 23 been before August 28, 1996, because
 24 the date of this memo.
 25 A. Yeah. The earliest -- the earliest

1 timing seemed to be right for us to be
 2 able to go to the company and invest
 3 the capital dollars. Hudson was in a
 4 -- you know, had a couple of good
 5 years, and so it was time to pitch a
 6 big project. And, you know, so the
 7 timing was right, so we put the
 8 resources behind it.
 9 Q. You had earlier said that the wall oven
 10 team was looking at an in-line process
 11 of smoking product on a continuous
 12 basis. Did the radiant wall oven also
 13 look at an in-line process of browning
 14 a product on a continuous basis?
 15 A. Yeah. Browning and smoking. I mean,
 16 it was all together.
 17 Q. When you use smoke and use that
 18 interchangeably with browning?
 19 A. It is different. It is different. As I
 20 explained, one impedes flavor and one
 21 doesn't, but many times I may mean both
 22 interchangeably, even though they're
 23 not really.
 24 Q. Okay. On page three of this document,
 25 which is Bates stamp number 16, at the

1 that I would say is this 5/16.
 2 Q. Let's go off the record.
 3 (Off the record)
 4 (Back on the record)
 5 A. The earliest that I can identify is
 6 this 5/16/96, and what it was was we
 7 were looking to take the -- Tony had
 8 been talking about in-line, you know,
 9 being able to in-line smoke for a
 10 number of years, and he went and was
 11 put on this project with his -- to do
 12 this cooling thing, and he came back
 13 excited about using this same
 14 technology on what is the 01 document
 15 kind of four or five pages in, this
 16 Cryojet model cooler/freezer. And he
 17 was -- he basically started getting
 18 fired up again about doing this, and I
 19 said, hey, we need to do it. I said,
 20 you know, we need to put the resources
 21 on it. I said, you know, it's an
 22 idea, before it was kind of an idea
 23 then, you know, we kind of got started
 24 getting the technologies married up to
 25 each other, and so -- and also, the

1 top it says, "I have attached a very
 2 elementary summary of how this system
 3 is going to work to try and help
 4 everyone to visualize each stage and
 5 what it does. Do you see that?"
 6 A. Right.
 7 Q. And I assume "I" refers to Lisa Thomas,
 8 is that correct.
 9 A. Right.
 10 Q. If we go to the last page, which is
 11 Bates stamp number 18, it has radiant
 12 wall oven process, do you see that?
 13 A. Right.
 14 Q. Is that the process being referred to
 15 in this memo?
 16 A. Yes.
 17 Q. Okay. And this is a summary of how the
 18 system is going to work?
 19 A. Right. Yes, sir.
 20 Q. Okay. Let's go through the radiant
 21 wall oven process, if we can.
 22 A. Oh, sure.
 23 Q. The first one is cooling, which is that
 24 the product is removed from oven and
 25 put through the NE cooling system and

1 held at less than 40 degrees. Do you
2 see that?
3 A. Right.
4 Q. Is this an idea that the radiant wall
5 oven team came up with on its own?
6 A. Yes.
7 Q. Did the radiant wall oven team get this
8 idea from Unitherm?
9 A. No.
10 Q. The next one is loading. It says,
11 "Product is manually removed from rack
12 onto the radiant wall oven conveyor,
13 traveling at approximately six feet per
14 minute." Do you see that?
15 A. Right.
16 Q. Is this an idea that the radiant wall
17 oven team developed on its own?
18 A. Yes.
19 Q. Is this an idea that the radiant wall
20 oven team obtained from Unitherm?
21 A. No.
22 Q. Next is steam tunnel. It says, "Remove
23 condensation and purge." Do you see
24 that?
25 A. Yes.

1 that's -- there's drenching systems out
2 there.
3 Q. But this is not -- is this an idea that
4 the radiant wall oven team obtained
5 from Unitherm?
6 A. No. No. Absolutely not.
7 Q. Okay. The next item it says oven.
8 A. Right.
9 Q. "1150 degrees to 1200 degrees, five
10 feet equals 45 seconds." Do you see
11 that?
12 A. Yes.
13 Q. Is this an idea that the radiant wall
14 oven team came up on its own?
15 A. Another company came up with that idea.
16 Whether or not they had any intention
17 of using it in this application I have
18 no idea. They may have invented this
19 oven to, you know, flash -- I have no
20 idea what the pyramid or radiant wall
21 oven inventors envisioned when they did
22 this thing, but --
23 Q. This is not an idea that was obtained
24 from Unitherm?
25 A. No. No. No. We didn't come up with

1 Q. Is this an idea that the radiant wall
2 oven team came up with on its own?
3 A. Yes.
4 Q. And did this radiant wall oven team
5 develop this idea or obtain this idea
6 from Unitherm?
7 A. No.
8 Q. Next is drenching, and in parentheses
9 it says (smoke applied). "Five feet
10 plus in feed and out feed." In
11 parentheses (total 10 to 12 feet)
12 closed parentheses. "Shower from top
13 and bottom. 20-gallon holding tank
14 underneath this area to hold
15 recirculating smoke." Do you see that?
16 A. Right.
17 Q. Is this an idea that the radiant wall
18 oven team developed on its own?
19 A. That particular piece is kind of an
20 existing -- I mean, that exists.
21 Q. So it's not a new idea?
22 A. Right.
23 Q. It had been something that --
24 A. Yeah. I can't say that the radiant
25 wall came up with that, no. I mean,

1 the idea of a radiant wall oven, we
2 came up with the idea of, you know,
3 putting it together to form a process.
4 Q. Did you come up with the idea of
5 putting it all together from a process
6 as a result of some information you
7 received from Unitherm?
8 A. No.
9 Q. Next is tempering space.
10 A. Uh-huh.
11 Q. "Two to three feet of space before
12 going into chiller, 50 degrees for pack
13 room temperature, loose moisture off
14 the product." Do you see that?
15 A. Right.
16 Q. Is that an idea that the radiant wall
17 oven team developed?
18 A. Yes.
19 Q. Is this an idea that the radiant wall
20 oven team obtained from Unitherm?
21 A. No.
22 Q. Next is impingement chill.
23 "Temperature 10 degrees to 15 degrees,
24 16 feet of conveyor/spiral belt.
25 Surface must be back to under 40." I

1 assume that's 40 degrees?
 2 A. Forty degrees.
 3 Q. Is this an idea -- do you see this?
 4 A. Right.
 5 Q. Is this an idea that the radiant wall
 6 oven team developed on its own?
 7 A. Again, this is an existing technology
 8 that the idea to use it in this system
 9 was their idea.
 10 Q. Was this an idea that had been obtained
 11 from Unitherm?
 12 A. No.
 13 Q. And then finally it says "Pack directly
 14 connects to 8600." What's 8600?
 15 A. It's, again, an existing piece of
 16 equipment.
 17 Q. Is this an idea that the radiant wall
 18 oven team obtained from Unitherm?
 19 A. No.
 20 Q. Would you agree that the radiant wall
 21 oven process, as described in document
 22 with Bates stamp number 18, was not
 23 developed as a result of any
 24 information that you had obtained from
 25 Unitherm?

1 A. No. I don't think it was at the point
 2 in time we were aware of Unitherm.
 3 Q. Let me --
 4 A. I don't know that for a fact, but I
 5 don't think so.
 6 Q. Okay. Unfortunately the way I asked it
 7 and the way you responded is a little
 8 different, so let me ask it a different
 9 way. Did Hudson Foods and the radiant
 10 wall oven team develop any part of the
 11 radiant wall oven process, which is
 12 described in Bates stamp number 18, as
 13 a result of any information received
 14 from Unitherm?
 15 A. No.
 16 Q. Now I take it that Unitherm was
 17 contacted for the purpose of helping
 18 out with this radiant wall oven process?
 19 A. No, they were -- they were contacted
 20 because their -- they had an oven --
 21 they had an oven that was -- that we
 22 heard, how I don't know, that would do
 23 this better in this particular
 24 application; because the radiant wall
 25 oven was at such extreme heat, and the

1 problem is that an impingement oven had
 2 too much velocity. It would blow the
 3 smoke off. And Unitherm's actually
 4 used a much gentler heat, and so that's
 5 what we needed was something that was
 6 at lower temperatures and more gentle
 7 in its air flow. And that was the
 8 nice thing about the radiant flow oven,
 9 there was no air flow, it just, you
 10 know, it was all temperature. So we
 11 needed a little air flow so we wouldn't
 12 have to go to such high heat, and that
 13 was -- you know, I'm sure some of these
 14 other guys were more -- in my
 15 conversation with Phil Weiner, which is
 16 that, you know, this really had -- you
 17 know, this really was a better way of
 18 going.
 19 Q. So is it fair to say then that the
 20 reason Unitherm was contacted by Hudson
 21 Foods was for the purpose of using it,
 22 using Unitherm's oven?
 23 A. Yes.
 24 Q. Okay. Was the purpose of contacting
 25 Unitherm to use it for any other part

1 of the process that was described in
 2 Bates stamp number 18?
 3 A. In my mind, no.
 4 Q. Who first contacted Unitherm?
 5 A. I don't -- I don't know. I assume it
 6 was Tony.
 7 Q. And do you recall when that occurred?
 8 A. Oh, we were pretty hot on this. We
 9 were moving. And as soon as we had a
 10 thing on it, you know, because we were
 11 committed, you know, so it may have
 12 been 8/29. I mean, you know, it may
 13 have been the day after this radiant
 14 wall oven team -- it was somewhere
 15 shortly after that because on September
 16 19th we were making comparisons
 17 between, so this is within days of this
 18 8/28. We were going down the way and
 19 we switched very quickly, because by
 20 the 19th, which was two and a half
 21 weeks later, we were already making
 22 comparisons on our documentation.
 23 Q. This goes actually -- this is the part
 24 that I don't understand. If you go to
 25 document number 11 --

1 A. Right.
 2 Q. -- is there anything on --
 3 A. How did I get out of order? Eleven,
 4 okay.
 5 Q. Is there anything on the first page of
 6 11, which is dated June 25th, 1996,
 7 that refers to the use of a Unitherm
 8 oven?
 9 A. No.
 10 Q. Is it fair to say that the numbers
 11 reflect tests done on a radiant wall
 12 oven?
 13 A. Yes.
 14 Q. Okay. Now, you have attached, and it's
 15 attached as an exhibit to this
 16 deposition, attached to document Bates
 17 stamp number 11 is something dated --
 18 I'm sorry, something -- Bates stamp
 19 number 12. Do you see that?
 20 A. Right.
 21 Q. And it involves the oven comparison.
 22 A. Right.
 23 Q. And the question I have, is that
 24 something that would have happened on
 25 June 25th, '96 or is this something

1 Unitherm process, and I want to go into
 2 a little more detail about what that
 3 Unitherm process may or may not have
 4 been. It appears that at least on
 5 August 28th, 1996 or before that that
 6 Unitherm was not involved in any way in
 7 the radiant wall oven team's analysis,
 8 is that correct?
 9 A. That is correct.
 10 Q. And is it also correct that Hudson
 11 Foods contacted Unitherm for the
 12 purpose of purchasing an oven? Is that
 13 correct?
 14 A. That is -- that is my understanding.
 15 Q. Did Hudson Foods also contact Unitherm
 16 for the purpose of purchasing a process?
 17 A. No.
 18 Q. The in-line process of smoking product
 19 on a continuous basis, which is what
 20 the radiant wall oven team was
 21 interested in, the Unitherm oven would
 22 only be one part of that process, is
 23 that correct?
 24 A. Correct.
 25 Q. In your discussions with any members of

1 that perhaps was attached inadvertently?
 2 BY MR. CASTRO: Object to
 3 the form of the question.
 4 A. The -- there -- the 6/25/96 RWO is my
 5 writing. I mean, I know that to be a
 6 fact. And the radiant fire oven is the
 7 handwriting of my assistant. If that
 8 document was 6/15/96 I don't think it
 9 would have been possible for this oven
 10 comparison to be -- either that or I
 11 don't have the right date here. It has
 12 to be one or the other.
 13 Q. (By Mr. Kroll) So is it your testimony
 14 that the oven comparison on Bates stamp
 15 number 12 did not take place on June
 16 25th, 1996?
 17 A. I am pretty certain of that.
 18 Q. And is it your testimony that the oven
 19 comparison would have occurred sometime
 20 after the August 28, 1996 memo by Lisa
 21 Thomas that has been marked as -- with
 22 Bates stamp number 14?
 23 A. Yes.
 24 Q. During Mr. Castro's questioning of you
 25 there was some discussion as to the

1 the radiant wall oven team did they
 2 describe to you their meetings with
 3 David Howard?
 4 A. No.
 5 Q. So you're not aware of any
 6 conversations that anyone on the
 7 radiant wall oven team would have had
 8 with David Howard?
 9 A. No. No.
 10 Q. Yes, you would not have known?
 11 A. Yes, I would not have known.
 12 Q. I have a problems sometimes with using
 13 a negative.
 14 A. It could very well --
 15 Q. I'm sorry, did you want to --
 16 A. I mean, for all I know, you know, we
 17 may have called up David and sat down
 18 with him and put that flow chart in
 19 front of him and said, you know, here's
 20 what we're trying to do.
 21 Q. You don't know whether or not that was
 22 done?
 23 A. I would assume that it might have -- I
 24 would assume that that would be a
 25 logical way to do it. I don't know

1 that. You know, here's what we're
 2 thinking. I mean, that's how I would
 3 do it.
 4 Q. In other words, you would have shown
 5 David Howard Bates stamp number 18 and
 6 said, "This is the process that we're
 7 looking in. How can you help me?"
 8 A. Yeah.
 9 Q. And you don't know whether or not that
 10 was --
 11 A. I have no idea. I was a cheerleader.
 12 Q. And you don't know who on the team made
 13 that initial contact with Unitherm?
 14 A. The logical person to do that would be
 15 Tony, and he would probably sit down
 16 with probably Rick Bohonek, our
 17 engineer, and say, "Here's what we're
 18 thinking" or "Here's what we're trying
 19 to do." I mean, the Unitherm oven, at
 20 that point in time, had a brochure, and
 21 that brochure was selling that oven as
 22 a gentler way of cooking primarily
 23 chicken products.
 24 Q. Uh-huh.
 25 A. But in my conversation with Phil

1 to the document 40.
 2 A. Uh-huh.
 3 Q. Which is the purchase requisition.
 4 A. Right.
 5 Q. Do you have that?
 6 A. Yeah. Uh-huh.
 7 Q. And in this purchase requisition on
 8 October 29th, 1996, Hudson Foods was
 9 interested in purchasing the Unitherm
 10 rapid flow.
 11 A. Right.
 12 Q. The CIP.
 13 A. Right.
 14 Q. Bag stripper and the liquid smoke
 15 dredge tank.
 16 A. Right.
 17 Q. What was the purpose of the liquid
 18 smoke dredge tank?
 19 A. It was to basically -- in that process
 20 what we were doing was we were looking
 21 at purchasing this, this, and I think
 22 this and this. And I think at a later
 23 date we skipped the bag -- the bag
 24 stripper and the liquid smoke drench
 25 tank. We ended up doing those by

1 Weiner, and he showed me the brochure
 2 and explained the technology of why he
 3 thought that this would work, I mean, I
 4 became really excited about it and
 5 really started pushing everybody to,
 6 you know, let's go see this. Let's go
 7 see this. Because I was really always
 8 concerned about having a piece of
 9 equipment with a tube that was 1600
 10 degrees and worried that someone was
 11 going to get hurt, burned, or somebody
 12 was going to, you know, spray water
 13 cleaning it on this tube that was, you
 14 know, hot. And just thinking of the --
 15 you know, so I really wasn't too
 16 thrilled about the radiant wall oven.
 17 I was excited about the technology, but
 18 I had some major concerns about
 19 something in my plant that was 1600
 20 degrees. It just doesn't sound safe.
 21 Q. I can understand that. Let's turn to
 22 document which has been Bates stamped
 23 42.
 24 A. Okay.
 25 Q. Actually, to set it up better let's go

1 ourselves, and then I think that we --
 2 and then we bought an impingement
 3 chiller from him.
 4 Q. Okay. So let's compare Bates stamp
 5 number 18, which is the process which
 6 Hudson Foods had developed, with the
 7 purchase requisition on Bates stamp
 8 number 40.
 9 A. Okay.
 10 Q. Under drenching on Bates stamp number
 11 18 --
 12 A. Right.
 13 Q. -- that process, that part of the
 14 process was going to be performed by
 15 Unitherm's liquid smoke drench tank, is
 16 that correct?
 17 A. Right. Right.
 18 Q. And the part of the process identified
 19 as oven on Bates stamp number 18 was
 20 going to be performed by the Unitherm
 21 Rapid Flow II?
 22 A. Right.
 23 Q. I'm sorry, I don't recall, what was CIP
 24 again?
 25 A. CIP was a continuous cleaning system.

- 1 Q. Okay, that was not part of the process
2 that was identified?
- 3 A. Right.
- 4 Q. Is that something that Hudson Foods had
5 obtained from Unitherm that it had not
6 known before?
- 7 A. CIP systems are something that are out
8 on most, but on the radiant wall oven
9 you just can't a -- there's no need to
10 have a CIP. The thing's so doggone hot
11 nothing can live in it. So this
12 happened to come with -- since this was
13 a stock piece of equipment it came with
14 the CIP and without the CIP and we
15 wanted to have the CIP.
- 16 Q. But there was nothing novel or unique
17 about the CIP?
- 18 A. No. No. No, sir.
- 19 Q. And with respect to the bag stripper,
20 that is not part of the process which
21 is described on Bates stamp number 18,
22 is that correct?
- 23 A. Yeah. David had a piece of equipment
24 that he thought -- that he'd been
25 working on and, you know, it just

- 1 streamlined the process or it took
2 labor out so, you know, we said, yeah,
3 that would be something we need to --
4 we'd be interested in.
- 5 Q. Okay. And you said later Hudson Foods
6 purchased an impingement chill piece of
7 equipment from Unitherm, is that
8 correct?
- 9 A. Right. Our -- yeah --
- 10 Q. Let me just finish the question and
11 then you can elaborate. And the
12 purpose of that was to use equipment
13 for the impingement chill which was
14 identified in Bates stamp number 18 as
15 part of the overall process?
- 16 A. Right.
- 17 Q. I'm sorry, now I interrupted you.
- 18 A. No. I believe at this point in time we
19 had the money appropriated for the
20 impingement chill, but we were actually
21 thinking that it would go back to this
22 original work that we had done with
23 this group of people over here on this
24 -- from this inner system.
- 25 Q. Right.

- 1 A. Which is document number one. But I
2 think what happened was that his system
3 or his quote on the impingement chill
4 was so much cheaper than what this was
5 that we ended up going with this, but
6 then we also said, well, you know, we
7 think we can get this done locally
8 cheaper.
- 9 Q. The CIP or the bag stripper?
- 10 A. The drench tank. And I think we ended
11 up saying, well, the bag stripper isn't
12 really going to work for us. So David
13 was okay, happy, I'm assuming, because
14 he was giving up a couple of pieces but
15 -- he gave up maybe 50, 60 thousand,
16 but he ended up getting 300,000 for the
17 impingement. I was not the person in
18 those conversations.
- 19 Q. Okay. Now, if we can turn to Bates
20 stamp number 42 and how we had started
21 this.
- 22 A. Okay.
- 23 Q. And about, oh, three-quarters of the
24 way down on the left-hand side it says,
25 "Unitherm to build smoke applicator we

- 1 decide on." Do you see that?
- 2 A. Unitherm to assemble -- how far? Oh,
3 okay. "Unitherm to build smoke
4 applicator we decide on," yes.
- 5 Q. What does that mean?
- 6 A. Rick Bohonek didn't like what -- didn't
7 like what Unitherm was showing him. He
8 thought that there was a better way of
9 doing it, and he felt like we could use
10 local contractors here in Springfield
11 and get a better -- a better -- so it
12 kind of started out as, you know,
13 "There's got to be a better way of
14 doing that than what you're showing us,
15 David. How about we do this and we'll
16 let you" -- and then, as I remember his
17 quote was, in Rick Bohonek's mind was
18 high, and he basically said that, you
19 know, we didn't need to go that way,
20 that he could get a better piece of
21 equipment cheaper from a machine shop
22 here in town.
- 23 Q. Okay. And in fact that's what you
24 ended up doing, isn't that correct?
- 25 A. I believe that is exactly what we ended

1 up doing.
 2 Q. And turn to --
 3 A. The other thing that I would point out
 4 on this document is that it's obvious
 5 that we decided on Unitherm and she's
 6 using the same chart and she's got
 7 radiant wall oven at the top. So you
 8 can see that, you know -- that, you
 9 know, we -- things haven't changed,
 10 we've just switched directions of what
 11 we're doing.
 12 Q. And instead of using a radiant wall
 13 oven you're going to be using a
 14 Unitherm oven?
 15 A. Yeah. Otherwise we wouldn't be saying
 16 Unitherm to assemble oven in Ponca
 17 City. You know, it's the same project,
 18 it's just....
 19 Q. All right. If we can turn to Bates
 20 stamp number 44. You testified that 44
 21 and 45 and 46 reflect a collaborative
 22 effort with Hickory Foods --
 23 A. Yeah.
 24 Q. -- Unitherm, and Hudson Foods to fine
 25 tune things.

1 A. Yeah. Yeah.
 2 Q. And what exactly were you trying to
 3 fine tune?
 4 A. The exact -- the exact parameters of
 5 time and temperature to deliver the
 6 desired color. I mean, which smoke
 7 worked best, what the oven times were,
 8 what the temperature times were to
 9 deliver the desired colors. And we
 10 actually had color charts that said we
 11 want to hit this color. And basically
 12 this smoke at this time and this
 13 temperature will deliver a reddish
 14 brown color. On a chart, on a color
 15 chart that's number six.
 16 Q. Uh-huh.
 17 A. And that's what we want this product to
 18 look like. And, you know, what I told
 19 my people was is I said when our
 20 products are in a deli case I want them
 21 to look like you're looking at jelly
 22 beans. I said I want to see a red one
 23 and I want to see a brown one and --
 24 because, you know, people buy with
 25 their eyes and, you know, it's going to

1 be like Easter eggs.
 2 Q. Hopefully not a green one.
 3 A. Right, we didn't do green. But each
 4 one of these products that we talk has
 5 a specific color that we wanted it to
 6 be.
 7 Q. And that was Unitherm and Hudson Foods
 8 and Hickory all working together,
 9 correct?
 10 A. Yes. And Phil Weiner and, you know, a
 11 whole host of other folks.
 12 Q. If you can turn to a document with
 13 Bates stamp 48.
 14 A. Okay.
 15 Q. Number five, I guess, under capital A
 16 is a statement, I guess, from Phil
 17 Weiner saying "I support the
 18 recommendation to build a drench
 19 cabinet system locally with designed
 20 confirmed at last week's testing. This
 21 gives you control of an important part
 22 of the system." Do you see that?
 23 A. Right.
 24 Q. And you agreed with this recommendation?
 25 A. Yes.

1 Q. And this would be consistent with
 2 statements made before about the idea
 3 to not use the Unitherm smoke
 4 applicator, is that correct?
 5 A. Yeah.
 6 Q. All right. Let's turn to -- actually,
 7 why Phil Weiner make that
 8 recommendation?
 9 BY MR. CASTRO: Object to
 10 the form of the question.
 11 A. I don't know what he meant by "This
 12 gives you control of an important part
 13 of the system."
 14 Q. (By Mr. Kroll) Let me ask you this.
 15 Would you agree that the drench cabinet
 16 system is an important part of the
 17 system?
 18 A. I would agree with that.
 19 Q. And the system that he is referring to
 20 is this in-line browning, smoking
 21 process?
 22 A. Right. But I guess what I'm saying is
 23 I don't know if he meant -- what he
 24 meant by control. I think he might be
 25 saying this gives you control of an

1 important part of the system thinking
 2 of control in the way of building it
 3 how you want in the time frame that you
 4 need.
 5 Q. At the cost you want?
 6 A. At the cost you want, right. I don't
 7 think there was any issue of, you know,
 8 who controls the system, who owns the
 9 system or anything like that. There
 10 was never that.
 11 Q. Okay. If you can turn to Bates stamp
 12 number 52.
 13 A. Okay. I'm sorry, yeah.
 14 Q. And this is a letter dated December 27,
 15 1996 from Rick --
 16 A. Bohonek, right.
 17 Q. -- Bohonek to David Howard?
 18 A. Right.
 19 Q. And Jerry Adams. It raises an opening
 20 question as to who at Unitherm did
 21 people at Hudson Foods work with?
 22 A. I think Jerry Adams really was the
 23 person that they worked with, and I
 24 think David -- I think Jerry was really
 25 the -- you know, I think he was the

1 technician, you know. David really was
 2 the guy who ran the company and was
 3 the, you know, salesman and the
 4 entrepreneur of the company, you know.
 5 He did a little engineering, a little
 6 sales, a little human -- you know, all
 7 of those things. And Jerry Adams was
 8 the person on the account. David and
 9 Unitherm just kind of just -- they
 10 become one, you know, because of, you
 11 know, David and the uniqueness of his
 12 personality, the fact that he's
 13 British, and, you know -- you know, all
 14 of those things that make him a unique
 15 individual.
 16 Q. Do you believe that Hudson spent most
 17 of its time dealing with Jerry Adams as
 18 opposed to David Howard?
 19 A. I don't know that for a fact. I would
 20 think that that would be the fact.
 21 Most of my dealings was with David
 22 directly.
 23 Q. Okay.
 24 A. But, like I said, our -- you know, we
 25 met, we signed a P.O., I looked him in

1 the eye and wanted to make sure, you
 2 know, then we talked a couple of times
 3 about where things were, you know, and
 4 those decisions were made.
 5 Q. With respect to Bates stamp number 52.
 6 A. Okay.
 7 Q. The first paragraph said, "Through
 8 several meetings here at the Hudson
 9 Foods Jefferson Street plant it has
 10 been determined that a shower smoke
 11 applicator will be used to apply liquid
 12 smoke to our turkey breasts prior to
 13 entry into your oven. Since there has
 14 been so much controversy over the
 15 subject, it has been decided that
 16 Hudson Foods will build this piece of
 17 equipment." Do you see that?
 18 A. Right.
 19 Q. What controversy was there over the
 20 subject?
 21 A. David's design of his drenching system
 22 was one where the product was placed on
 23 a belt and it was submerged into the
 24 product. So let's say you've got
 25 basically a -- if I remember this

1 correctly. But it came down on a belt
 2 and went in and was submerged into the
 3 word that -- the smoke, brown, whatever
 4 that word is.
 5 Q. Pyrolysis?
 6 A. Pyrolysis, right. And what Rick felt
 7 like was that he could control this
 8 better through the showering of it, as
 9 opposed to the -- so it was basically
 10 let's shower this and sprinkle it on
 11 and then recirculate it up, as opposed
 12 to taking it down into this, because it
 13 is by nature acidic. And so if you
 14 leave it in there it's just going to
 15 get -- you know, our belief was that it
 16 was going to get soaked into the
 17 product. We don't want that. We want
 18 to just drizzle it on. That was the
 19 controversy.
 20 Q. What was David Howard's reaction to
 21 that?
 22 A. I have no idea.
 23 Q. So the system which Unitherm used to
 24 apply liquid smoke to the turkey breast
 25 was not a system that Hudson Foods was

1 interested in purchasing?
 2 A. That is true.
 3 Q. And the showering of the liquid smoke
 4 onto the turkey breast is an idea that
 5 was not obtained from Unitherm?
 6 A. Right.
 7 Q. Let's go to Bates stamp number 93. Do
 8 you have that document in front of you?
 9 A. Right. Uh-huh.
 10 Q. And this is the process that was
 11 described to the USDA, is that correct?
 12 A. Yes, sir.
 13 Q. The date of this document would have
 14 been March 1, 1997?
 15 A. Right.
 16 Q. Let's compare -- actually, let's not.
 17 Let's go to the first one under Roman
 18 numeral I A.
 19 A. Right.
 20 Q. Bates stamp number 93. "Product will
 21 be conveyed through a steam tunnel to
 22 remove any purge which has adhered to
 23 the product. Approximate time in the
 24 steam tunnel is 60 seconds." Do you
 25 see that?

1 A. Right.
 2 Q. Is this an idea that Hudson Foods had
 3 obtained from Unitherm?
 4 A. No.
 5 Q. Is this an idea that Hudson Foods had
 6 developed on its own?
 7 A. I believe that to be true.
 8 Q. I B. "Product will then be conveyed
 9 through an air knife which will blow
 10 any remaining purge off the product."
 11 Do you see that?
 12 A. Right.
 13 Q. Is this an idea that Hudson Foods
 14 obtained from Unitherm?
 15 A. No.
 16 Q. Is this an idea that Hudson Foods had
 17 developed on its own?
 18 A. The -- there was such a group of people
 19 that were involved in this that any one
 20 of these particular pieces could have
 21 come from either Hudson Foods or Phil
 22 Weiner or Hickory Specialties or
 23 Unitherm, so, in each one of these
 24 cases, I can't -- what I can't answer
 25 is when you say Hudson Foods, I mean, I

1 can't tell you that an individual from
 2 Hudson Foods came up with any one of
 3 these things. It was through the
 4 collaborative efforts of a number of
 5 people, you know, and one of those
 6 people were Unitherm. I don't think
 7 Unitherm -- I mean, I can't -- I can't
 8 knock them out, but I can't give them
 9 credit either.
 10 Q. Let's go through each one.
 11 A. All right.
 12 Q. Under C. "Product will then be
 13 conveyed through a drench system to
 14 apply the external coloring of its
 15 smoke or caramel solution."
 16 A. Uh-huh.
 17 Q. "Coloring solution will be filtered
 18 through a 1/8-inch screen to remove the
 19 solids prior to returning to the
 20 reservoir, then through a 7/64-inch
 21 in-line screen. Approximate time in
 22 the drench system is 60 seconds." Is
 23 this an idea which Hudson Foods had
 24 obtained from Unitherm?
 25 A. I do not believe so.

1 Q. Now is liquid smoke a substitute for
 2 caramel solution?
 3 A. I think if you look in C it says
 4 liquid smoke or caramel solution,
 5 basically trying to put those as
 6 external coloring and then going to
 7 color and then quantifying as being one
 8 and the same and then going to coloring
 9 solution, which would mean that from
 10 here on out he means liquid smoke
 11 and/or caramel solution.
 12 Q. So you can substitute liquid smoke for
 13 caramel?
 14 A. Yes.
 15 Q. And you can substitute caramel for
 16 liquid smoke?
 17 A. Yes. Again, they're not the same, but
 18 we in this instance are using them as
 19 one and the same.
 20 Q. Okay.
 21 A. And I think that parentheses right
 22 there is again to state to USDA the
 23 smoke or caramel is a coloring solution
 24 and, you know, that's what that
 25 parentheses on your -- right here,

1 you're looking at --
 2 Q. Yes.
 3 A. -- C on product description.
 4 Q. Right.
 5 A. Yours didn't look the same as mine.
 6 Oh, it is. Okay, I'm sorry.
 7 Q. With respect to D, "Product will then
 8 be conveyed through an air knife which
 9 will blow any excess coating solution
 10 off the product," do you see that?
 11 A. Yeah.
 12 Q. Is this an idea which Hudson Foods
 13 obtained from Unitherm?
 14 A. I don't know.
 15 Q. Who would know?
 16 A. Rick Bohonek, Phil Weiner, Andrew.
 17 Q. I'm sorry, what was Andrew's last name?
 18 A. Cobb.
 19 Q. Where does he live?
 20 A. Here.
 21 Q. Okay.
 22 A. Robert might, Robert Brooks. Those --
 23 those -- Robert or Andrew are the two
 24 that are here that were pretty intimate
 25 into it. All of this and how it all

1 A. Yes. Exactly.
 2 Q. Now do you know whether or not the
 3 rapid flow oven which originally was
 4 tested by Hudson Foods was a two-stage
 5 or three-stage process?
 6 A. I want to think that it was a two-stage
 7 process and they built a three-stage.
 8 Q. And why did you build a three-stage?
 9 A. Because the rapid flow that they were
 10 selling I believe was built to cook
 11 small -- small chicken breasts or
 12 pieces of product that were relatively
 13 thin, and we're talking about putting
 14 nine-pound balls of -- you know, so we
 15 were -- we had to build a pretty heavy
 16 duty piece of machinery, so we had to
 17 upgrade all of the conveyors and all of
 18 the -- you know, this had to be spec
 19 built to our particular product,
 20 because instead of you putting, you
 21 know, 1500 pounds of product on it when
 22 it was completely full, if you go down
 23 there and look at that we're putting,
 24 you know, five to seven thousand pounds
 25 on it, so we had to build an oven that

1 came together and what it was, I mean,
 2 I was not involved in that. This is
 3 execution.
 4 Q. Let's go to E. "Product will then be
 5 conveyed through a three-stage heat
 6 application to set the coloring
 7 solution to the product. Oven
 8 temperatures will range from
 9 approximately 600 to 670 degrees
 10 Fahrenheit." Is this an idea which
 11 Hudson Foods obtained from Unitherm?
 12 A. Yes.
 13 Q. Is this part of the collaborative
 14 effort as well?
 15 A. This was their stock oven. This
 16 represents their oven, as I understand
 17 it.
 18 Q. So the description in E is the rapid
 19 flow?
 20 A. Right. Whether or not their regular
 21 oven was two-stage and they built us a
 22 three-stage or, you know, whatever,
 23 but, you know, this is meant to say,
 24 you know --
 25 Q. Put it through the rapid flow oven next?

1 would give us the ability to hold that
 2 much weight, so we had to upgrade
 3 everything, plus we had to build it so
 4 we would get the proper space, head
 5 space to be able to get the product to
 6 go through there. And I think it was
 7 a two-stage and it went to three stages
 8 because -- I can't remember exactly
 9 why, but I know that there was a
 10 reason. I think it had something to do
 11 with basically control, control of the
 12 coloring based upon the amount of
 13 product that would be in the oven at
 14 any particular time. I could be very
 15 wrong with that.
 16 Q. But the specs were prepared by Hudson,
 17 is that correct?
 18 A. Yes. This was not a stock piece of
 19 equipment. This was built to spec.
 20 Q. And the specifications were
 21 specifications that were prepared by
 22 Hudson and sent to Unitherm?
 23 A. The design and the specs that we came
 24 up were Unitherm. We told them, you
 25 know, this is how much product's going

1 to go through and this is what the
2 weight's going to be, and dah, dah,
3 dah, and so he had to design the piece
4 of equipment to do what we said. And
5 later in the issues that we had toward
6 the end were because, you know, the
7 calculations weren't correct, that
8 there wasn't enough electrical or there
9 wasn't enough juice, enough horse
10 power, enough ability built in to be
11 able to handle it to the parameters in
12 which we had given him, you know.
13 Q. So Hudson Foods provided the parameters
14 to Unitherm and Unitherm, based on
15 those parameters, built this
16 three-stage oven?
17 A. Yes.
18 Q. And the oven which Unitherm had
19 initially provided to Hudson, to Hudson
20 Foods, would not have been appropriate
21 for the product that Hudson Foods was
22 interested in using?
23 A. I believe that that is correct. I
24 believe that the oven that was
25 currently in existence could do what we

1 needed to do in Ponca City, but I am
2 -- I believe that it could not handle
3 it in the production kind of
4 environments that we required. We
5 could test product, but I don't think
6 that we could manufacture it. And
7 Robert and Andrew and Tony Muller would
8 know that to be a fact.
9 Q. Now is there something unique about
10 this three-stage heat application in
11 the oven?
12 A. It is unique in the sense that Unitherm
13 created an in-line -- I don't know if
14 it'd be a conventional oven, or, you
15 know, a convection oven. A
16 conventional oven and an impingement
17 oven. Somebody who's an expert in
18 ovens could tell you exactly what those
19 are, but, you know, an impingement oven
20 is high, high velocity, you know, and
21 so it wouldn't work. And a convection
22 oven is the same thing, it flows air
23 over the tops. And a conventional oven
24 it gives you kind of a roll. And what
25 David's oven was was an in-line. My

1 definitions may be wrong, but basically
2 an in-line, so yeah, it was unique to
3 the industry. That's why when we saw
4 it we knew that it was probably the
5 best thing for our application.
6 Q. Let's go to F. "Product will
7 immediately be conveyed through an
8 impingement chilling system to return
9 surface temperatures to 50 degrees
10 Fahrenheit or less. This will allow
11 the finished product temperature to
12 equilibrate to 40 degrees Fahrenheit or
13 less."
14 A. Yeah.
15 Q. What's --
16 A. The equilibration is when it gets out
17 of the end that you can be 50 but the
18 chilling process has already been
19 achieved, and within that amount of
20 time it will get to 40 degrees or less.
21 So it had to get to a minimum of 50
22 degrees out of the end of that and then
23 the equilibration is, you know,
24 basically if you heat something up to
25 160 degrees surface temperature that

1 that heat will move to the inside. And
2 the surface may be much cooler, but
3 internally it's still cooking. And
4 it's the same thing with freezing.
5 Q. Is this description on F an idea that
6 Hudson obtained from Unitherm?
7 A. No.
8 Q. Okay, let's go to G.
9 A. Okay.
10 Q. "Product will then be vacuum packaged in
11 preparation for shipment." Do you see
12 that?
13 A. Right.
14 Q. I take it that that's not --
15 A. No.
16 Q. -- something that Hudson Foods obtained
17 from Unitherm?
18 A. No.
19 Q. So of the process description A through
20 G on Bates stamp number 93, the only
21 part of it which Hudson Foods obtained
22 from Unitherm was E?
23 BY MR. CASTRO: Object to
24 the form of the question.
25 Q. (By Mr. Kroll) Is that correct?

1 A. E and maybe A, B, or C, but I have no
 2 idea if that is a fact or not. Like I
 3 said, it could have been. It might
 4 have been, it might not have been.
 5 Q. This process description, that's the
 6 process, the in-line process used by
 7 Hudson Foods, correct?
 8 A. I'm not sure what I'm answering.
 9 Q. I'm sorry.
 10 A. The process description?
 11 Q. Yes.
 12 A. Is it the number I? Yes. Okay.
 13 Q. I A through G, this is --
 14 A. Right. This is --
 15 Q. -- in-line smoking process.
 16 A. It is the entire process, yes.
 17 Q. And that's the in-line smoking process
 18 used by Hudson Foods?
 19 A. Right.
 20 Q. Okay.
 21 A. Right.
 22 Q. Now as part of this process, is a
 23 browning liquid pyrolysis product used
 24 which is obtained from the pyrolysis of
 25 hardwoods or sugars?

1 A. If you're asking me is this liquid
 2 smoke and caramel coloring I would say,
 3 yes, it is.
 4 Q. I'm not asking you that. I'm asking
 5 you whether or not the process uses a
 6 browning liquid pyrolysis product which
 7 is obtained from the pyrolysis of
 8 hardwoods or sugars?
 9 A. As I know the definition of that word,
 10 yes.
 11 Q. What's your definition of the word?
 12 A. That it's caramel coloring or liquid
 13 smoke. I mean, I don't call it that
 14 name.
 15 Q. Okay.
 16 A. I mean, that may be the correct
 17 definition of liquid smoke or caramel
 18 solution, but that's not a word that I
 19 use.
 20 Q. Is the browning liquid pyrolysis
 21 product obtained from the pyrolysis of
 22 dextrose?
 23 A. I'm -- that's above my area of
 24 expertise.
 25 Q. You would not know?

1 A. No, I do not know. I'm not sure I
 2 should know, but I don't know.
 3 Q. Well, do you know whether the browning
 4 liquid pyrolysis product is obtained
 5 from the pyrolysis of hardwoods or
 6 sugars, or is that also something above
 7 your knowledge?
 8 A. I do not know what the pyrolysis or the
 9 means of going about pyrolysis is. I
 10 know what liquid smoke is, I know what
 11 Maillose is, I know what caramel
 12 coloring is. How they get it to there,
 13 to that point, I don't know.
 14 BY MR. HANOR: They
 15 probably bought it off the shelf.
 16 A. Yeah, it's out there. I mean, Red
 17 Arrow is involved in this because
 18 that's what they do.
 19 Q. (By Mr. Kroll) Do you know the amount
 20 of browning liquid pyrolysis product
 21 that's based on the weight of the
 22 precooked whole muscle meat product?
 23 A. No, sir, I don't.
 24 Q. Do you know if the browning liquid
 25 pyrolysis product contains a masking

1 agent or a flavoring enhancing
 2 composition?
 3 A. No, I do not.
 4 Q. Do you know if the browning liquid
 5 pyrolysis product contains turkey
 6 flavor or turkey broth or a mixture of
 7 the two?
 8 A. No, I do not.
 9 Q. The oven which Hudson Foods purchased
 10 from Unitherm, do you know -- here it
 11 indicates oven temperatures ranging
 12 from approximately 600 to 670 degrees
 13 Fahrenheit. Do you see that on --
 14 A. Right.
 15 Q. -- I E on Bates stamp number 93?
 16 A. Right. Yes, I do. I see that.
 17 Q. Are you aware of the use of
 18 temperatures other than the range of
 19 600 to 670 degrees Fahrenheit?
 20 A. Yes. We even at an early stage were
 21 debating going to much lower
 22 temperatures than the 600 to 670, and
 23 in fact in the end moved the
 24 temperatures significantly lower, not
 25 only due to the fact that it was better

1 for the product but it was also better
2 for the equipment. But at this early
3 stage in the game those were the
4 temperature parameters that we were
5 using, and even at this point in time
6 there was a debate within, you know,
7 the operators and manufacturing people
8 wanted to run high temperatures and
9 fast speeds and we wanted to get better
10 quality product and move the
11 temperatures down, you know, even 100
12 degrees. And we may even be in the
13 400 degrees today because -- because it
14 -- it's better for the product and it's
15 better for the equipment.

16 Q. Do you know what the oven temperature
17 range is now?

18 A. I don't know, but I certainly could
19 find out. And I think if you look
20 through Phil Weiner's sheets, I think
21 there will be some references to
22 telling me that and Jim that we need to
23 slow down and lower the temperatures.

24 Q. But as you sit here you don't know what
25 those temperatures are?

1 Q. Maybe I misunderstood your testimony
2 earlier today. I thought that you were
3 referring to Dr. Weiner's notes on
4 January 30, 1997 and around those
5 dates, the Bates stamps 53 to, oh, 79
6 as tests that were run, as opposed to
7 actually cooking a product.

8 A. Yeah.

9 Q. It was a test?

10 A. Yeah.

11 Q. And the purpose of the test was to
12 determine the right speed and the right
13 temperature, correct?

14 A. Yeah, okay. Yeah.

15 Q. All right. And then you have a
16 document in March of 1997 to the USDA.

17 A. Right.

18 Q. And it lists what that range is, which
19 is 600 degrees to 670 degrees.

20 A. Right. Approximately.

21 BY MR. HANOR: Excuse me.

22 That's not what it says. You're
23 mischaracterizing the document.

24 A. With range from approximately 600 to
25 670.

1 A. No, sir.

2 Q. What those ranges are?

3 A. No, sir, I don't. And the product that
4 was -- I know they're lower than the
5 600.

6 Q. In February through May of 1997 the
7 product that we discussed at length
8 when Mr. Castro was asking you
9 questions, do you recall whether or not
10 that product was prepared using
11 temperature range from approximately
12 600 to 670 degrees Fahrenheit?

13 A. Yeah. I would assume, but I also think
14 that you can refer back to 53 and, you
15 know, you will see a whole range of
16 temperatures. If you turn to the very
17 last page, you'll see zone one was at
18 570 and the other two were at 670, so
19 there, for example, is one where it was
20 lower than the 600, so that product was
21 basically run at temperature settings
22 of 570, 670, and 670, so.... Here's
23 one in the middle at 550 on the third
24 zone. Here's one with 550 on the third
25 zone.

1 BY MR. HANOR:
2 Approximately.

3 Q. (By Mr. Kroll) I'm sorry, that's --
4 yes. And so my question for you is
5 were products that were prepared using
6 the Hudson Foods in-line smoking
7 process and sold in May of 1997 using
8 oven temperatures from approximately
9 600 to 670 degrees Fahrenheit?

10 A. I guess, based upon this documentation,
11 approximately 600 to 670. But I know
12 that we -- and, you know, whether or
13 not I can bring that documentation
14 forward that we did lower temperatures
15 significantly, because the problem that
16 you had was at higher temperatures and
17 faster speed we could get more
18 production out, but it also would make
19 the liquid smoke get too hot and would
20 create a bitter, a little bit of a
21 bitter taste. So, at some point in
22 time, I at a cutting basically told
23 them what does it matter that you run
24 them at 600 degrees or 670 or whatever
25 that number is and get more through

1 put? You've got enough capacity to do
 2 like 10 more million pounds than you
 3 already have. Why don't we slow down,
 4 get the temperatures down, and get them
 5 right? At what point that happened in
 6 this period of time I do not know, but
 7 I do know that I can -- that I can
 8 probably find documentation to that
 9 effect.

10 Q. You don't know whether or not it
 11 occurred before or after May of 1997?

12 A. No, I do not. Not with any certainty.

13 Q. Do you know what the temperature at the
 14 core of the product was before exposing
 15 it to the rapid flow oven?

16 A. We -- we did product from 40 degrees.
 17 I know the product on any basis there
 18 was no -- no set temperature in which
 19 it had to be. We did product and ran
 20 it through the rapid flow that had set
 21 for eight hours or six hours or
 22 whatever that might be, and that would
 23 have meant that that product was 40 or
 24 less, and we did product that was right
 25 out of the oven. We found that having

1 particular --

2 BY MR. HANOR: We don't
 3 know what your case is about, but what
 4 relevance is this? Because I'm about
 5 ready to shut it down.

6 BY MR. KROLL: This goes
 7 -- it goes into the validity of the
 8 patent.

9 BY MR. HANOR: Is that an
 10 issue in your case?

11 BY MR. KROLL: Yes.

12 BY MR. HANOR: Is that an
 13 issue in the case, the validity of the
 14 patent?

15 BY MR. CASTRO: It is.

16 Q. (By Mr. Kroll) Do you know what the
 17 temperature at the core of the product
 18 was after it was exposed to the oven?

19 A. You know, Howard, I'm really not sure
 20 that I'm thinking as clearly as I need
 21 to be to answer these questions.

22 Q. That's fair.

23 A. I'm having a hard time trying to keep
 24 straight what you're asking me. And I
 25 know -- I know that I can probably

1 the product extremely hot going through
 2 the oven created some variability.

3 Q. This is with respect to the core of the
 4 product as opposed to the --

5 A. It's immaterial, I think, to the
 6 process from an execution standpoint.
 7 It was not a parameter.

8 Q. I understand. The reason I'm asking is
 9 on I F it talks about returning the
 10 surface temperature to 50 degrees
 11 Fahrenheit or less, and I'm not
 12 interested in surface temperature I'm
 13 interested in the core of the product.

14 A. Right.

15 Q. And if you knew what the core of the
 16 product was before it went into the
 17 rapid flow oven --

18 A. I'm sorry, I understand where you're
 19 coming from. We were typically putting
 20 product in there that was 40 degrees.

21 Q. At the core?

22 A. At the core.

23 Q. And that's Fahrenheit?

24 A. Fahrenheit, yes. We did run product
 25 that was more than that, but this

1 answer it, but I'm getting a little
 2 scrambled.

3 Q. I understand that. We've been going
 4 for about five hours.

5 A. Uh-huh.

6 Q. Frankly, I was expecting that you
 7 wouldn't know the answer to this
 8 because you had earlier testified that
 9 you didn't really know the engineering
 10 aspects of it and you were focusing
 11 more on the generalized areas.

12 A. And I tend to want to answer every
 13 question and tend to at least have a
 14 basic knowledge and sometimes have a
 15 hard time saying I don't know. And I'm
 16 getting myself to the point where I
 17 can't concentrate on something this
 18 technical and be able to -- I'm afraid
 19 I'm going to say something, you know,
 20 to answer the question just to answer
 21 the question.

22 Q. I don't want you to do that. If you
 23 don't know the answer it's perfectly
 24 fine.

25 A. Yeah.

- 1 Q. Because you've already elaborated
2 beforehand what your knowledge areas
3 are.
4 A. Yeah. Competency is such a big thing
5 with me. There's a part of me that
6 says I need to answer this question,
7 and I'm afraid that I'm going to give
8 you some wrong data just from the
9 standpoint I'm not understanding it and
10 want to answer your questions.
11 Q. Well, let me ask a general question.
12 Do you know what the temperature at the
13 core of the product was before or after
14 the product entered the Unitherm oven?
15 A. No.
16 Q. Is there someone at Hudson Foods who
17 would know?
18 A. Yes.
19 Q. And who is that?
20 A. Robert Brooks.
21 Q. Did Unitherm inform you that they had
22 sold the rapid flow oven to anyone else?
23 A. There was always some question in my
24 mind whether or not Carolina Turkey had
25 one before we did or whether we had one

- 1 Q. Did you ever sign an agreement saying
2 that you would keep any information you
3 received from Unitherm as secret or
4 confidential?
5 A. Me personally? I don't think I or
6 anyone else in my organization did, but
7 I could be wrong on that.
8 Q. Well, as part of the documents that
9 were produced there was no confidential
10 agreement.
11 A. I'm not aware of any confidential
12 agreement between the two parties.
13 BY MR. HANOR: In writing?
14 BY MR. KROLL: In writing.
15 A. In writing.
16 Q. (By Mr. Kroll) Did you have any oral
17 agreement with Unitherm that you would
18 keep any information you received from
19 Unitherm secret or confidential?
20 A. A lot of things were said the day we
21 signed the P.O. from me to David that
22 you would say to anyone relative to,
23 you know, buying a piece of equipment.
24 And I'm sure what I said to David was,
25 "It better work and you better not go

- 1 first. I think that there was some
2 mention that somebody in Red Meat had
3 one before we did, to do what I don't
4 know. But I was pretty confident by
5 looking at the products out in the
6 marketplace that we were if not first
7 we sure knew how to run it better than
8 anybody else out there.
9 Q. Okay. Did -- was natural smoke used at
10 all as part of this process?
11 A. As I understand the definition of
12 natural smoke, I would say no.
13 Q. Was it possible to brown the precooked
14 whole muscle meat product in this
15 process without using liquid smoke?
16 A. To brown it, yes.
17 Q. And how would you do that?
18 A. With a caramelizing agent or something
19 that -- like a Maillose.
20 Q. Were you ever told by anyone at
21 Unitherm that the information provided
22 by Unitherm to you was secret or
23 confidential?
24 A. No. Quite frankly I was more worried
25 the other way.

- 1 run and tell somebody what I'm doing,"
2 because that's usually how I do things.
3 Q. So you were --
4 A. Now does that constitute an agreement?
5 Q. Well, I'm not going to characterize it
6 one way or the other.
7 A. This may be my wife.
8 BY MR. HANOR: Let's take
9 a quick break.
10 (Off the record)
11 (Back on the record)
12 Q. (By Mr. Kroll) We were talking about
13 the day that you signed the agreement
14 or signed the purchase order to
15 purchase the Unitherm rapid flow oven
16 and some other products manufactured by
17 Unitherm. And you said that you told
18 David that it better work and he better
19 not tell anyone what you were doing, is
20 that correct?
21 A. Under normal circumstances with a
22 vendor or somebody that I'm getting
23 into an agreement with, I typically
24 will say something to that effect, and
25 I would not think that it would be any

1 different with David. What exactly
 2 happened in 1996 on that particular
 3 date --
 4 Q. But it's your custom and practice that
 5 you would say something like that?
 6 A. I would want to get my issues up front
 7 and make him very aware of what my
 8 expectations were.
 9 Q. So is it fair to say that your
 10 expectations were that he was not to
 11 disclose any information he learned
 12 from you?
 13 A. I would say that's true.
 14 Q. Did you have an equal understanding
 15 that you were not supposed to disclose
 16 any information you received from him?
 17 A. I don't recall that, but if he would
 18 have said that I would have given him
 19 the same, you know, as -- part of
 20 meeting David and doing that at the
 21 P.O. time was establish the honorable
 22 intentions of getting this done.
 23 Q. But you don't recall any conversation
 24 about keeping confidential or secret
 25 information which you had obtained from

1 Q. Did you get a high level of help from
 2 him?
 3 A. I think David did deliver in
 4 retrospect. I wish that we at the end
 5 -- and I know there was other people
 6 who would disagree, but I think when
 7 you look at it in total, you know --
 8 no, I don't think that he delivered 100
 9 percent on everything. I don't think
 10 that everything he sold was up to the
 11 degree that -- with the knowledge he
 12 had and all the things, and I think
 13 that he tried to make it right and I
 14 think I tried to hold him to, you know,
 15 the letter of our agreement, and in the
 16 end we argued about syntax or something
 17 and we agreed to come to a compromise.
 18 Q. And, again, we'll get to that in just a
 19 second.
 20 A. Okay.
 21 Q. But are you -- did you ever tell anyone
 22 at Hudson Foods.
 23 A. Okay.
 24 Q. Did you get that? Did you ever tell
 25 anyone at Hudson Foods.

1 Unitherm?
 2 A. No, I don't. I don't recall that.
 3 Q. You had testified that one of the
 4 reasons you wanted to meet David Howard
 5 in person was to look him in the eye
 6 when you signed this purchase order.
 7 Why was that?
 8 A. Because we were -- when you got this
 9 whole system all put together we were
 10 talking something that was going to
 11 cost us, you know, somewhere between
 12 500 and a million dollars. It wasn't
 13 something that was done, that I was
 14 aware of, and we basically were
 15 endeavoring on something that was not
 16 really out there, what I considered to
 17 be -- whether he considered it to be
 18 would have been a different story, but
 19 I considered it to be somewhat of a,
 20 you know, untried system, and I wanted
 21 to make sure that he understood that I
 22 -- you know, I expected a high level of
 23 commitment. My people were highly
 24 committed and I was highly committed
 25 and we could not accept failure.

1 A. Right.
 2 Q. That they should keep secret or
 3 confidential any information that they
 4 obtained from Unitherm?
 5 A. I don't -- I either don't think so or
 6 don't understand exactly what you're
 7 asking me. I don't think I did. I
 8 don't think I did. At that point in
 9 time I was more worried about other
 10 companies finding out about --
 11 Q. Your process?
 12 A. Your process.
 13 Q. You mean Hudson Foods' process?
 14 A. My process, right. I believed it to be
 15 my process. But it was also his, you
 16 know -- I mean, it was also -- I don't
 17 think it could have been done without
 18 his oven.
 19 Q. Right.
 20 A. So, I mean, that's where I keep coming
 21 back to all of these hours is that this
 22 was a collaborative effort by a number
 23 of people, and for any one person to
 24 say that they own it, and certainly for
 25 ConAgra, you know, it's kind of blowing

1 my mind.
 2 Q. Okay. In your years of experience in
 3 the food industry, which is 20 years?
 4 A. Just over 20 years.
 5 Q. Have you ever signed a confidential
 6 agreement at a trade show?
 7 A. Never at a trade show.
 8 Q. And let's go to document with Bates
 9 stamp number 103.
 10 A. Okay.
 11 Q. Now the document that you have is
 12 attached to something with Bates stamp
 13 number 102, correct?
 14 A. Right.
 15 Q. Is there any relationship between 102
 16 and 103 that they would be attached?
 17 A. No.
 18 Q. With respect to 103.
 19 A. Right.
 20 Q. This is a letter that you wrote to
 21 David Howard, correct?
 22 A. Correct.
 23 Q. And it's dated April 7, 1997?
 24 A. Right.
 25 Q. And could you read the first paragraph,

1 the fire suppression system kept going
 2 on because we were taking so much
 3 juice. So the actual engineering of it
 4 wasn't -- what we did was my guys went
 5 in here and fixed it, put in higher,
 6 you know -- you know, bigger chain
 7 drive system, you know, took the tubes
 8 out and increased the juice on the
 9 electrical and all these types of
 10 things. And basically what I was
 11 saying to David is here's my cost.
 12 Q. For fixing them?
 13 A. Yeah. And in the case of the
 14 impingement chiller, I basically was
 15 flat telling him that it's not an
 16 impingement chiller. You know, by
 17 definition an impingement chiller has
 18 to have some sort of air velocity at
 19 certain speeds, and this design was,
 20 you know, not even close. But, you
 21 know, also at that point in time I also
 22 had spent 750, 800 thousand dollars
 23 and, you know....
 24 Q. Well, let's go through each of the
 25 items --

1 please?
 2 A. "David, as we have discussed in the
 3 past, there are still some unresolved
 4 issues outstanding concerning the
 5 equipment purchased from your company.
 6 Hudson is requesting an official
 7 response on the items listed below, as
 8 they are not performing according to
 9 the representations made in our
 10 contract."
 11 Q. And then you list three items.
 12 A. Right.
 13 Q. Are those the three issues or problems
 14 that Hudson Foods had with Unitherm?
 15 A. Yes.
 16 Q. And were these issues resolved to your
 17 satisfaction?
 18 A. We -- let me step back and just say
 19 these issues right here represent the
 20 fact that the design was not to the
 21 standards to be able to handle the kind
 22 of production volume and weight and
 23 time and temperature. You know, the
 24 electrical wasn't strong enough, the
 25 drive belt wasn't strong enough, and so

1 A. Okay.
 2 Q. -- and how they were resolved. The
 3 first one is "The impingement chiller's
 4 inability to cool 900 pieces per hour
 5 to the previously contractual agreed
 6 temperature."
 7 A. Really never performed to satisfaction
 8 and we never were able to get it to
 9 perform entirely to what we were hoping
 10 the design would do.
 11 Q. To this day does it perform the way you
 12 had anticipated it would?
 13 A. Not really. To the letter of what we
 14 want, no, it does not.
 15 Q. Did you ask David Howard for a rebate
 16 of costs?
 17 A. No, I think -- I think what I did was
 18 I let him know that, you know, I think,
 19 you know, that this wasn't what he
 20 represented it to be, and it was more
 21 important to me at that point in time
 22 that I get points 2 and 3, because if
 23 I got 2 and 3 then I got the majority
 24 of my savings. And it wasn't necessary
 25 to get the 2.1 or 2.4 that we --

1 million dollar in savings that we
 2 talked about earlier with the chilling.
 3 I would -- you know, it was like, okay,
 4 I can take, you know, 80 percent of
 5 these chips off the table, you know.
 6 Q. Uh-huh.
 7 A. Yeah, I would have liked to have that
 8 done, but I think it would have been so
 9 far -- the design was so far away from
 10 being able to deliver that it would
 11 have -- he would have had to put so
 12 much money in and I would have had to
 13 -- you know, in order to get it done
 14 it would have had to go to litigation.
 15 Q. It did not go to litigation?
 16 A. No, because if I got these other things
 17 fixed I was -- you know, I wasn't
 18 completely satisfied, but I was pretty
 19 happy that I was getting --
 20 Q. I'm sorry.
 21 A. I was getting the majority of my
 22 savings. I just needed to get it --
 23 you know, and I was getting it. I was
 24 already getting it by April 7th because
 25 I had already told my guys to fix it,

1 number?
 2 A. Two, three. Two and a half.
 3 Q. Let's go to number 2 on Bates stamp
 4 103. "The oven's fire suppression
 5 system tripping falsely."
 6 A. And this was because the electrical
 7 system was not to the caliber that it
 8 needed to be to handle the kind of
 9 weight and temperature loads that we
 10 had, and so it would short it out and
 11 then the fire suppression system would
 12 come on. And so we started, you know,
 13 having to replace all these fuses and
 14 stuff and I instructed Rick Bohonek,
 15 "Don't keep doing the same thing over
 16 and over, upgrade it to the point where
 17 we can run because we've got to run
 18 this thing," you know.
 19 Q. And was this fixed?
 20 A. Yes, we fixed it.
 21 Q. How much money did it cost you to fix?
 22 A. I don't remember exactly. I think we
 23 were arguing on these issues of
 24 something in the neighborhood of
 25 \$45,000. And I held back the money,

1 you know, because it was just so much
 2 -- so much, you know, it meant so much
 3 to me, meant so much to my company.
 4 Q. Did you think about purchasing another
 5 impingement chiller?
 6 A. Not really. I guess always in my mind
 7 I felt like my guys would end up
 8 figuring out how to make it work. They
 9 never have been able to make it work,
 10 but it does do -- it does do some, you
 11 know, it just doesn't do it to the
 12 point where we can bag it, you know,
 13 right off the end. There's still
 14 enough heat in it that you can't put it
 15 into the bag so we have to re-rack it
 16 to get it down to 40 and then pack it.
 17 Q. Well, on a scale of one to 10, a 10
 18 being you're extremely satisfied with
 19 the product, how would you rank the
 20 impingement chiller?
 21 BY MR. CASTRO: Object to
 22 the form of the question.
 23 A. It would be very low. In the form of
 24 -- it would be less than five.
 25 Q. (By Mr. Kroll) Can you come up with a

1 and that's where -- where we ended up.
 2 David came here, I had these issues, he
 3 -- and I didn't pay him \$45,000. He
 4 came here and I said, "You fix this,
 5 I'll give you the 45. Here's my
 6 money." And that's where he said,
 7 "Well, you know, I'm not sure," blah,
 8 blah, blah, blah. And he said, "Why
 9 don't you pay me -- why don't you pay
 10 me half of that?" And at that point
 11 in time, you know, better to get on
 12 down the road for both of our companies.
 13 Q. But currently the fire suppression
 14 system no longer trips?
 15 A. No. No. No, in fact on April 7th we
 16 probably were well on our way, you
 17 know, to having that fixed.
 18 Q. You, meaning Hudson Foods, was able to
 19 fix it, correct?
 20 A. Right.
 21 Q. Unitherm did not to fix the problem?
 22 A. I could not wait on Unitherm. I could
 23 not wait on Unitherm and I took it upon
 24 myself to fix it. I was requesting him
 25 to do it, but in the meantime I was

1 telling them, you know, this is so
2 important to me that we've got to go
3 forward and we've got to hold back, and
4 if this thing goes longer, you know, we
5 can come back to him and say -- and
6 then, you know, at the same time, you
7 know, David's a businessman and the
8 last dollars you get are your profits.
9 You know, and he wanted, like any
10 businessman, you know, the maximum
11 amount of profit he could get, and I
12 was probably holding a big part of his
13 profits. And, you know --

14 Q. Let's talk about number 3. "Oven chain
15 drive system modifications need to be
16 made to ensure it is in sound working
17 condition." Can you describe that?

18 A. The chain drive system was under --
19 under-designed for the weight loads
20 that we were putting on it. And then
21 2 and 3, quite frankly, David may have
22 in all earnest, you know, in all good
23 intentions designed it to be what it
24 was capable of, but in -- and that
25 might have been theoretical. Nobody

1 had put this kind of weight and this
2 kind of -- in one of his ovens. So,
3 you know, I don't think that he
4 maliciously under-designed this. I
5 just don't think -- you know, 900
6 pieces an hour times, you know, 10
7 pounds, we're talking about running,
8 you know, 9000 pounds through this.
9 And this product, you know, if it was
10 indeed at 40 degrees, which I don't
11 know it was, you know, that's a lot of
12 BTU's that's got to be done. And
13 you're talking about 620 degrees and,
14 you know, the juice, the electricity to
15 move all that product through there.

16 Q. If we can, let's turn to document Bates
17 stamp number 106.

18 A. Okay.

19 Q. Which is a memo from Phil Weiner to Jim
20 Overstreet dated April 18, 1997.

21 A. Uh-huh.

22 Q. Do you see that?

23 A. Yes.

24 Q. Under A. 1. a) it says, "Products show
25 signs of fading and excess free purge

1 in package. Observing moisture coming
2 to surface before bagging." Can you
3 tell me about that?

4 A. Yeah. We were basically saying that
5 because we were not getting the BTU's
6 out of the impingement freezer when we
7 were bagging it that because it wasn't
8 to the 50 degrees that equilibrated to
9 40 that it was causing excess moisture
10 to be -- or excess purging to occur,
11 which then again faded the product.

12 Q. So this is the result of the problem
13 you were having with the impingement
14 chiller which you purchased from
15 Unitherm?

16 A. Yes.

17 Q. Turn to document number -- page 108.

18 A. Okay.

19 Q. Under 8. a) it says "Preheating is
20 necessary. Three options: Move Zone I
21 in front of drench systems; explore hot
22 air units of Cryovac; talk to Unitherm
23 about one of the zones they have in
24 their plant." Do you know what this is
25 about?

1 A. Yeah. At this point in time we
2 discovered that by preheating the
3 product going into the drench it would
4 allow the product to take the liquid
5 smoke in a better manner, give us more
6 consistency, and also it addressed this
7 issue of fading -- of fading, and so
8 what we did is we actually built a
9 little oven that we put in front of the
10 --

11 Q. That was not something that you
12 purchased from Unitherm, correct?

13 A. I don't believe it was.

14 Q. The idea that preheating the product
15 would be -- before the smoke treatment
16 would be better, is that an idea that
17 Hudson Foods obtained from Unitherm?

18 A. It was Andrew Cobb's idea.

19 Q. So the answer is, no, you did not get
20 this from Unitherm?

21 A. No.

22 Q. Again we did the double negative. Let
23 me -- did the idea of preheating the
24 product come from Unitherm?

25 A. No, it was not.

1 Q. All right. Let me just go through my
2 notes and see if there's anything else.
3 One other question. In your
4 conversation with David Howard on the
5 phone when he was describing the
6 history of the process, and he told
7 you, I believe, that he had shown the
8 process to Cargill and Carolina, do you
9 recall that conversation?
10 A. What conversation are you referring to?
11 Q. I'm sorry. After you received the
12 letter from Chris Salm of
13 Swift-Eckridge.
14 A. Right.
15 Q. ConAgra. You had two conversations
16 with David Howard. One of those
17 conversations he talked about the
18 history of the process.
19 A. Right.
20 Q. Do you recall that?
21 A. Yeah, I remember.
22 Q. And in that conversation he had told
23 you that he had shown this process to
24 Cargill and Carolina Products. Do you
25 recall that?

1 browning liquid pyrolysis products
2 commercially available from Red Arrow
3 Products Company." And it goes on to
4 say, "Products useful include the
5 pyrolysis of hardwoods, such as liquid
6 smoke, select liquid smoke." That was
7 available from Red Arrow Products, so,
8 as your counsel pointed out, it's
9 something that's off the shelf and it's
10 created and therefore creates that
11 pyrolysis. Would you -- would you,
12 sir, expect when he talked about trade
13 secrets and confidentiality, would you
14 agree that you think that Mr. Howard
15 expects and trusts you to keep in
16 confidence any business secrets that he
17 related to you?

18 BY MR. KROLL: Objection
19 as to form.

20 A. I think that he -- yeah, I think that
21 he would expect me to, you know, at the
22 same level that I was. I mean, I fully
23 expected him to go out and sell this
24 system. I mean, this system or this
25 oven was out there. And I knew he

1 A. No, I don't remember him saying that.
2 I remember me saying that I had a
3 conversation with Carolina and Cargill
4 about whether or not they got the
5 letter and kind of what they were going
6 to do about it and what their stance
7 was. That wasn't with David. David
8 may have said something to that effect,
9 but that wasn't the context.
10 Q. What was their reaction, Cargill's and
11 Carolina's?
12 A. Cargill was like, "Can you believe
13 those guys?" and Carolina's wasn't
14 quite as nice.
15 BY MR. CASTRO: Could you
16 elaborate? No.
17 BY MR. KROLL: I have no
18 further questions.
19 REDIRECT EXAMINATION BY MR. CASTRO:
20 Q. I have just a few, hopefully. I want
21 you to not feel too -- I don't know
22 how to say it, but as you read the
23 patent you'll know that when they talk
24 about this pyrolysis product they go on
25 to say, Mr. Briggs, "such as the

1 would, but what I was hoping was that I
2 would have a jump on it and I would,
3 you know, be able to keep it
4 confidential. But, yeah, I would
5 expect him to have the same
6 consideration that I would expect.
7 Q. (By Mr. Castro) You would agree,
8 wouldn't you, that what he brought to
9 the table, so to speak, was a new and
10 innovative process, wasn't it?
11 A. I would consider it to be an
12 innovation. His oven was an innovation.
13 Q. The way it browned the product, smoked
14 the product, the air flow, that type of
15 thing?
16 A. The innovation was in a collaboration
17 of making the technology work for this
18 particular application.
19 Q. And that would be true even when
20 Counsel Mr. Kroll asked you about
21 number 93. You would agree that
22 everything on that page, at least in
23 your viewpoint, other than several
24 items, were developed through a
25 collaborative effort? Is that your

1 testimony?

2 BY MR. KROLL: Objection
3 as to form.

4 A. I would agree that the entire process
5 was not owned by anyone, it was a
6 collaboration of individuals and
7 companies.

8 Q. (By Mr. Castro) Sir, would you agree as
9 well that any one of these ideas laid
10 out from I A through G could have come
11 from Unitherm, but as you sit here
12 today you're just not certain?

13 A. That is correct.

14 Q. Now, as to number 93, sir, did any of
15 these concepts or ideas ever come to
16 you from ConAgra?

17 A. Certainly not.

18 Q. During any of these process
19 descriptions did you have any
20 communications, at least that you know
21 of, did you communicate directly with
22 anyone from ConAgra concerning this
23 process description?

24 A. No.

25 Q. Now, Counsel asked you about oven

1 involvement your company would not have
2 been able to succeed in this process,
3 certainly at that time anyway?

4 A. If we hadn't of learned about Unitherm
5 we probably would have either ended up
6 going with the radiant wall oven or
7 kept trying to test and kept trying to
8 test to the point where we didn't think
9 the technology would have been capable
10 to take that kind of risk as far as
11 risking capital investment.

12 Q. Okay.

13 A. Unitherm allowed us to move rapidly,
14 because it -- we knew, my people knew
15 that it would work and were comfortable
16 putting their -- you know, taking the
17 risk of saying I will -- we need to do
18 this, okay?

19 Q. As to item 106, Bates stamp 106,
20 Counsel asked you regarding, you know,
21 some of -- it talks about fading and
22 excess free purge, color development
23 issues.

24 A. Right.

25 Q. But he didn't go on to ask whether

1 parameters. It's fair to say, isn't
2 it, sir, that as you sit here today
3 you're not -- you testified that the
4 oven temperatures could have been less
5 than 600 degrees, true?

6 A. Yes.

7 Q. And quite likely were less than -- the
8 range was probably, would it be fair to
9 say, between 500 and 650 degrees
10 Fahrenheit?

11 BY MR. KROLL: Objection
12 as to form.

13 A. I believe it could be as low as 250.
14 I mean, I guess what I'm saying is that
15 whether it was 600 to 670 is
16 immaterial. It could have been 200 to
17 800. The fact of the matter is is that
18 oven had the capabilities of going that
19 low or going that high and this just
20 happened to be what -- and, you know,
21 from where I sit, to say that 600 to
22 670 has anything to do with anything,
23 kind of, you know....

24 Q. (By Mr. Castro) And would it also be
25 true that without Unitherm's

1 these items have all been worked out.
2 And indeed today the product produced
3 is as represented by David. And I'm
4 not sure if there was a question there,
5 but I'm going to ask it again.

6 BY MR. KROLL: I was about
7 to say that.

8 Q. (By Mr. Castro) Would it be fair to
9 say that all of these issues have been
10 worked out and that today the product
11 being produced is as represented?

12 A. I would say that that is true with the
13 exception of the impingement freezer.
14 The impingement freezer has never
15 worked to the degree that -- and
16 concept -- in concept it works, but it
17 would never -- I mean, really what you
18 would need to do is you would need to
19 take that freezer out and put something
20 in there that had a lot more power.

21 Q. But you're still using it, correct?

22 A. I am still using it, but in the process
23 of basically dismantling everything but
24 the fans.

25 Q. Okay. When you talked about

1 performance you talked about the belt
 2 and you talked about the tripping --
 3 A. Correct.
 4 Q. -- the electrical?
 5 A. Right.
 6 Q. Fair to say that those all deal with
 7 volume, the volume of product that's
 8 being put through the equipment, true?
 9 A. Right. Right.
 10 Q. It didn't deal with the basic operation
 11 of the equipment, true?
 12 A. True.
 13 Q. And even the impingement oven, if that
 14 is an oven --
 15 A. Everything in there from a design
 16 standpoint works, it's just that it
 17 would cost too much for me to make the
 18 impingement work to what I needed it to
 19 work.
 20 Q. In other words, your desires towards
 21 the end of the project changed from the
 22 initial invoice that was submitted to
 23 the company? And by that I mean you
 24 wanted a larger volume than what was
 25 originally submitted in Unitherm's

1 initial quote to you, is that fair to
 2 say?
 3 A. No.
 4 Q. Okay. So you always knew the volumes
 5 that you needed out of the oven?
 6 A. He sold me an impingement oven or
 7 impingement freezer that was not an
 8 impingement freezer.
 9 Q. Okay, and I'm not talking about the
 10 freezer right now, I'm talking about
 11 the oven.
 12 A. Yeah. I didn't get everything I paid
 13 for, but I am a satisfied customer
 14 because I wouldn't talk to him on the
 15 phone if I wasn't a satisfied customer.
 16 Q. And indeed today -- I don't want to say
 17 today, but you've spoken to him about
 18 the pasteurization process.
 19 A. Yeah. I would -- I would -- if he
 20 came up with something I would not not
 21 buy it from him, but I would be very,
 22 very specific and very, very, you know,
 23 sure that we both understood exactly
 24 what we were talking about. His
 25 impingement freezer was not an

1 impingement freezer and it would have
 2 cost both of us too much time and money
 3 to make it work, and at that point in
 4 time the result I was getting and the
 5 cost savings that I was getting, I
 6 mean, when you can spend \$800,000 and
 7 deliver two, three, four million
 8 dollars worth of savings, even though
 9 you only -- you think you're going to
 10 get four and you get three --
 11 Q. You still come out ahead.
 12 A. You still kind of are a little happy.
 13 Q. Sure.
 14 BY MR. HANOR: Let's take
 15 a little break.
 16 (Off the record)
 17 (Back on the record)
 18 Q. (By Mr. Castro) Maybe one question,
 19 maybe two.
 20 A. Okay.
 21 Q. Mr. Briggs, was any of the product that
 22 you testified to today that was
 23 produced, to your knowledge has it ever
 24 been returned as being unsatisfactory?
 25 A. Nothing of any material -- I mean,

1 occasionally we get product complaints,
 2 but it's very rare.
 3 Q. I'll pass the witness.
 4 RE-CROSS-EXAMINATION BY MR. KROLL:
 5 Q. Why are you in the process of
 6 dismantling everything in the
 7 impingement chiller except the fans?
 8 A. The fans will continue to bring some
 9 BTU's out of it, but the design of it
 10 is in such a way where we can't clean
 11 it with the ease and satisfaction that
 12 we have, so rather than -- it's
 13 basically a box and somebody has to go
 14 in there and it creates a confined
 15 space, and since it's a confined space
 16 we're having problems cleaning it.
 17 We've decided to, you know, take it
 18 apart and only use the pieces that --
 19 it won't be quite as effective, but the
 20 trade-offs that we're making are what
 21 we believe to be correct.
 22 Q. Based on your experience in working
 23 with David Howard, does he make
 24 representations that you can rely on?
 25 A. I don't think that David -- there was

1 any kind of -- you know, that he tried
 2 to do something, you know, that was not
 3 right, that when he represented it that
 4 he truly felt that it would do what it
 5 would do. I just don't think that he
 6 really knew, and my problem was you --
 7 I mean, if I say I'm going to do
 8 something and I make a mistake, and
 9 that was like the day of the P.O., "You
 10 are going to stand behind what you sell
 11 me because I'm going to buy it, and
 12 you're going to give me 100 percent
 13 satisfaction, are you not?" And he
 14 believed that he was. And when we got
 15 to the end, I don't think that it was
 16 and he made a mistake, and I knew it
 17 and he knew it and I knew that he
 18 couldn't fix it, and I let him off the
 19 hook. I could have, you know, but I
 20 think that we going in knew that there
 21 were a lot of things that were unknown
 22 and, like I said, I was -- I was
 23 satisfied to the degree that I didn't
 24 think it was worth it to go after that
 25 extra and put the screws to him.

1 Q. Can you answer that question in a yes
 2 or no? And you can say, no, I can't,
 3 that you need to elaborate. But the
 4 question was: Based on your experience
 5 in working with David Howard, does he
 6 make representations that you can rely
 7 on?
 8 BY MR. CASTRO: Object to
 9 the form of the question.
 10 A. I cannot answer that as a yes or no
 11 question. I can't answer that yes or
 12 no.
 13 Q. (By Mr. Kroll) Okay. I have no further
 14 questions.
 15 CROSS-EXAMINATION BY MR. HANOR:
 16 Q. I have a few questions. This
 17 deposition is to be confidential and
 18 restricted access, as well as the
 19 documents that have been produced by
 20 Willow Brook in this case, pursuant to
 21 the protective order entered by the
 22 court on August 7th, 2000.
 23 BY MR. KROLL: Okay.
 24 Q. (By Mr. Hanor) Who designed the control
 25 system for your design process used

1 here at Willow Brook?
 2 A. Unitherm.
 3 Q. What kind of control system is utilized?
 4 A. It's a -- basically an electronic panel
 5 board that controls the temperatures
 6 and speed settings of the oven itself,
 7 the rest of the -- the rest of the
 8 system and the impingement system is
 9 also on a similar board, and primarily
 10 the rest of the system is basically
 11 driven by the belt.
 12 Q. Is this basically a computer controlled
 13 system?
 14 A. Primarily.
 15 Q. Who programmed the computer?
 16 A. I believe that -- I believe that
 17 Unitherm did.
 18 Q. And if I understand it correctly, the
 19 computer controls for the oven controls
 20 the temperature and the conveyor speed?
 21 A. I believe that to be correct.
 22 Q. And so can it be adjusted so that you
 23 can vary the conveyor speed versus the
 24 temperature of the oven?
 25 A. Yes.

1 Q. Is there some type of control that
 2 determines the conveyor speed and the
 3 temperature of the oven?
 4 A. Yes.
 5 Q. Is there any algorithm or program that
 6 controls the relationship of these two
 7 variables?
 8 A. I do not believe so.
 9 Q. If you -- the faster the conveyor belt
 10 the higher the temperature has to be to
 11 get the certain browning of the product?
 12 A. No, I think the relationship of time and
 13 temperature are totally independent of
 14 each other.
 15 Q. How about the speed of the conveyor,
 16 does that affect the browning of the
 17 product?
 18 A. Yes. That would be the time element.
 19 Q. So if it goes slowly through the oven
 20 at a lower temperature would you get --
 21 could you get the same browning that
 22 you could get if you went faster
 23 through the oven at a higher
 24 temperature?
 25 A. Yes. And that -- that is what I was

1 referring to in earlier testimony of go
 2 slower with lower temperatures than go
 3 fast with higher temperatures would get
 4 you the same result or better.
 5 Q. Is it really a choice of how much
 6 capacity you want to put through there?
 7 A. Yes.
 8 Q. Did you brown precooked whole muscle
 9 meat products prior to Unitherm coming
 10 into the picture?
 11 A. Every day.
 12 Q. And when you came here in, what, '93?
 13 A. Yes.
 14 Q. Were they browning precooked whole
 15 muscle meat products?
 16 A. Every day.
 17 Q. And when you were browning these, what
 18 kind of shrinkage did you get?
 19 A. It was variable, and it could be, you
 20 know, as high as maybe 20 percent and
 21 as low as two percent. On average, we
 22 got a better yield, on average, based
 23 on that Lisa Thomas, but we achieved
 24 results that would be two percent to 20
 25 percent.

1 the system from Unitherm?
 2 A. The basic process was the same.
 3 Q. So would it be fair to say that the
 4 primary change to it was the addition
 5 of a conveyor system that took it
 6 through a continuous flow oven?
 7 A. Yes.
 8 Q. Other than that was the process
 9 basically the same?
 10 A. Yes.
 11 Q. It's just it wasn't automated before?
 12 A. It was a system to take a batch process
 13 to a continuous process. That happened
 14 to allow us to have better control over
 15 the process because of the design of a
 16 batch process versus a continuous
 17 process.
 18 Q. I don't have any other questions.
 19 BY MR. KROLL: I have a
 20 question but you go first.
 21 BY MR. CASTRO: I'll pass.
 22 No, I don't have any questions.
 23 FURTHER RECROSS-EXAMINATION BY MR. KROLL:
 24 Q. Changing from the batch process to the
 25 continuous in-line process, is that an

1 Q. Does that depend on the amount you keep
 2 it in the oven?
 3 A. Time and temperature, again.
 4 Q. Does -- is the product that you make
 5 using the system you bought from
 6 Unitherm any different than the product
 7 that you had before?
 8 A. Not really.
 9 Q. So the product, the finished products
 10 are basically the same?
 11 A. Yes.
 12 Q. Were you using similar liquid smoke
 13 before --
 14 A. Yes.
 15 Q. -- Unitherm came along?
 16 A. Yes.
 17 Q. So when Unitherm came along you really
 18 didn't change the liquid smokes that
 19 you were using?
 20 A. No.
 21 Q. When you finish browning it under your
 22 old process that you were using in at
 23 least 1993, did you chill it after that?
 24 A. Yes, we did.
 25 Q. Did any of that change when you bought

1 idea developed by Unitherm?
 2 A. No, it was not.
 3 Q. I have no further questions.
 4 BY MR. CASTRO: I have no
 5 questions.
 6 RECROSS-EXAMINATION BY MR. HANOR:
 7 Q. I have one other question. Prior to
 8 May 11th, 1997 was Hudson or Willow
 9 Brook, as it is now Willow Brook,
 10 commercially using the process it is
 11 using today?
 12 A. Absolutely.
 13 Q. Were they manufacturing product using
 14 that process prior to May 11th, 1997?
 15 A. Yes, we were. Clearly the evidence
 16 that I brought forward clearly shows
 17 that.
 18 Q. Were they delivering substantial
 19 amounts of that product to customers
 20 prior to May 11th, 1997?
 21 A. Yes.
 22 Q. Was that an experimental program that
 23 Hudson had?
 24 A. No. No. I mean, we're talking about
 25 hundreds of thousands of dollars that

1 we produced and sold prior to May 11th
 2 of 1997. To be in anything other than
 3 commerce would have been a tremendous,
 4 you know, hundreds of thousands of
 5 dollars hit to the P & L.

6 Q. I don't have any other questions.

7 BY MR. CASTRO: No
 8 questions.

9 BY MR. KROLL: No
 10 questions.
 11

NOTARIAL CERTIFICATE
 STATE OF MISSOURI)
) ss.
 COUNTY OF GREENE)

I, PATRICIA L. SNIDER, Free-Lance Court Reporter
 and a Notary Public in and for the County of Greene and
 State of Missouri, do certify that pursuant to the foregoing
 Stipulation, at Willow Brook Foods, 405 N. Jefferson, in the
 City of Springfield, in Greene County and said State,

MICHAEL BRIGGS

came before me, was by me duly sworn to testify the whole
 truth of his knowledge of the matters in controversy
 aforesaid, was examined and his examination then taken by me
 by steno-mask recording and afterwards typed, and subscribed
 by the witness as hereinbefore set out, on the day in that
 behalf aforesaid; and said deposition is herewith returned.

I further certify that I am not counsel, attorney,
 or relative of either party, or clerk, or stenographer of
 either party or of the attorney of either party, or
 otherwise interested in the event of this suit.

GIVEN under my hand and notarial seal at my office
 in Greene County, and State of Missouri, this ____ day of
 ____, 2001.

My commission expires: 06/05/05

 Notary Public within and for
 Greene County, Missouri.

 Michael Briggs

GIVEN under my hand and notarial seal at my office
 in _____ County, and State of Missouri, this
 ____ day of _____, 2001.

My commission expires: _____

 Notary Public within and for
 _____ County, Missouri.

A				
aback 132:7 ability 35:2 189:1 190:10 able 55:25 57:9 62:6 66:16 122:20 131:6,7 137:5 151:9 152:2 189:5 190:11 205:18 215:21 217:8 218:10 219:9 221:18 229:3 232:2 above 56:16 195:23 196:6 Absolutely 52:19 156:6 245:12 abstract 110:13 absurd 135:21 accept 211:25 access 29:6,12,20 239:18 accompanies 102:18 accordance 67:21 according 215:8 account 179:8 accuntant 7:13 8:18 9:15,25 11:25 accounting 6:7,12 7:11 8:17 9:13 22:8 100:12 101:2 accurate 58:1 achieved 192:19 242:23 acidic 181:13 acquired 8:9,10 16:14 17:14 75:25 action 18:1,2 actual 20:24 85:10 99:16 101:10,11 216:3 actually 6:13 7:8,25 31:12,13 43:14,23 44:3 47:6 60:10,11 61:2,5,9 63:4 70:6 96:21,25 98:1 101:8,8 106:6 107:5,10 111:18 119:24 125:8 137:8 160:3 161:23 167:25 171:20 175:10 177:6 182:16 200:7 225:8 Adams 178:19,22 179:7,17 add 20:17 added 68:24 adding 12:24,25 20:11 21:9 addition 96:22 244:4 additional 56:12 88:4 address 5:11 68:12 addressed 225:6 adhered 182:22 adjusted 240:22 admit 30:15 adult 106:3 advantages 25:6 advice 140:9 advised 146:19,22 147:2	affect 241:16 aforesaid 248:10,13 afraid 205:18 206:7 after 51:1 87:19 90:18 93:19 98:17 100:19 105:1 106:7 113:4,14 115:18 117:6 138:13 140:8 146:12,12 161:13,15 163:20 202:11 204:18 206:13 226:11 238:24 243:23 afterwards 3:6 248:11 again 104:10 122:18 151:18 158:7,15 169:24 185:17,22 212:18 224:11 225:22 233:5 243:3 against 122:10 agent 20:10,11 21:10 93:4 142:20,22 197:1 207:18 agents 58:25 aggressively 109:3 ago 141:8 143:15 148:15 agree 112:22 158:20 177:15,18 228:14 229:7,21 230:4,8 agreed 3:3,8,11,15 120:2 176:24 212:17 217:5 agreement 21:20 92:18 129:16 208:1,10,12 208:17 209:4,13,23 212:15 214:6 agricultural 126:3 ahead 42:11 50:7 75:22 79:14 118:10 129:17 129:22 139:17 236:11 air 13:1 160:7,9,11 183:9 186:8 191:22 216:18 224:22 229:14 Airline 78:12,13 airlines 11:10 Akin 2:13 Alaska 78:19 Albert 15:20,21 16:19 16:19 Albertson's 78:24 algorithm 241:5 Alkar 85:5,17,19 86:1 87:18 105:6 110:7,8 Allendale 6:6 allow 61:3 66:21 115:11 192:10 225:4 244:14 allowed 57:8 232:13 all-in-one 40:18 almost 7:14 80:25 110:4,5,9 126:19,20 alone 47:7 along 5:18 243:15,17 already 9:15 35:4,7 66:14,18 116:19,19 116:21 118:14 161:21 192:18 202:3 206:1 218:24,25	alternatives 27:25 52:17 although 87:24 always 57:8 167:7 206:23 219:6 235:4 amended 119:22 American 79:1 AMI 141:10 amiable 128:9 amount 37:12 57:10 72:7 81:5,6 102:2 189:12 192:19 196:19 222:11 243:1 amounts 245:19 analysis 9:18 55:10 56:3 62:19 63:17 164:7 Andrew 43:5,7 55:3 73:25 145:13,21 146:3 186:16,23 191:7 225:18 Andrew's 186:17 and/or 185:11 annualized 55:1,14 65:12 another 15:2 72:16 86:20 91:25 156:15 219:4 answer 73:15 82:6 183:24 204:21 205:1 205:7,12,20,20,23 206:6,10 225:19 239:1,10,11 answering 194:8 anticipated 217:12 Antonio 2:16 antsy 10:8 anybody 46:16 131:3 135:11 207:8 anymore 145:7 148:11 anyone 28:4 130:23 165:6 206:22 207:20 208:6,22 209:19 212:21,25 230:5,22 anything 10:1 12:25 20:17 33:14 38:22 52:11 59:4 78:15 80:19 114:13,22 119:4 122:19 123:20 130:23 135:13 136:4 137:15 140:3 141:20 141:25,25 144:22 162:2,5 178:9 226:2 231:22,22 246:2 Anytime 39:1 anyway 132:9 232:3 anywhere 72:3 132:5 apart 237:18 apologized 121:18 APPEARANCES 2:2 appears 42:20 50:24 54:2 65:18 69:18 164:4 apple 59:4 applicant 12:22 61:10 applicated 32:1 application 47:5 48:25	75:6 109:6 132:2 137:9 156:17 159:24 187:6 191:10 192:5 229:18 applicator 172:25 173:4 177:4 180:11 applied 58:24 67:19 75:9 86:1,2 155:9 apply 23:21 85:22 120:10 180:11 181:24 184:14 applying 24:3 appropriate 29:11 190:20 appropriated 171:19 approval 26:17 approve 66:21 67:2 Approximate 182:23 184:21 approximately 14:11 72:4 83:4 102:25 154:13 187:9 197:12 199:11 200:20,24 201:2,8,11 April 79:12 82:23 83:8 86:15 88:2 89:14 93:12 128:11 214:23 218:24 221:15 223:20 area 155:14 195:23 areas 205:11 206:2 arenas 79:2 argued 212:16 arguing 220:23 Arlington 79:4 around 33:13 34:6,7 48:21 145:5 200:4 arrival 100:8 Arrow 196:17 228:2,7 asked 26:2 54:11,24 123:2,3,3 127:2 133:1 133:2,23 144:10 146:9 159:6 229:20 230:25 232:20 asking 25:5 27:11 93:23,24 95:18,20 141:8 195:1,4,4 199:8 203:8 204:24 213:7 aspects 205:10 assemble 173:2 174:16 assembled 30:5 assets 16:14 assistant 163:7 associated 62:3 assume 142:25 153:7 158:1 161:5 165:23 165:24 199:13 assumed 129:13 assuming 38:8 172:13 assumption 68:3 attached 34:3 62:24 68:20 74:22,23 83:24 102:19 120:16,19,21 153:1 162:14,15,16 163:1 214:12,16 attempted 115:23 117:8 attempting 20:5 149:5	attorney 123:12 124:25 127:6,9 130:11,21 137:22 139:7,8 142:4 142:9,11 248:14,16 attorney/client 115:14 attributes 35:13 65:13 August 29:22 150:23 163:20 164:5 239:22 automate 19:8 automated 244:11 available 228:2,7 average 242:21,22 aware 12:6 27:5 28:4 28:10 39:25 40:8 117:21 124:21 139:1 139:4 146:4 159:2 165:5 197:17 208:11 210:7 211:14 away 78:7 80:10 133:4 136:2 137:24 140:6 218:9
				B
				B 4:5 183:8 194:1 baby 128:19 Bachelor's 6:7 back 8:4 10:3 12:21 23:20 48:22 74:11 80:4 90:12,13 97:13 97:17 99:18 100:11 100:11,24 104:2 110:8 115:17,25 119:18 126:9 136:2 141:10,16 146:8,9 147:10,11 149:20 151:4,12 157:25 171:21 199:14 209:11 213:21 215:18 220:25 222:3,5 236:17 backed 68:23 background 6:2 142:7 backlog 25:17 backwards 43:23 bacteria 68:9 bad 46:11 140:5 badmouth 135:11 bag 12:21 13:2 23:18 23:19 40:14,24 43:17 64:6 168:14,23,23 170:19 172:9,11 219:12,15 bagging 224:2,7 Bailey 2:5 balls 188:14 based 35:1 55:1,11,20 59:3 123:12,13 127:23 139:9 189:12 190:14 196:21 201:10 237:22 239:4 242:22 basic 16:4 205:14 234:10 244:2 basically 7:12,17,20 10:3,17,18 13:1,4,25 17:23 19:8,8 24:25 34:23 35:22 54:24 55:7,9 63:25 64:15 66:19 69:4,25 70:15

70:20,24 72:2,12 74:15,17 77:2 79:21 82:24,24 84:4 89:4,7 90:9,9,18 93:1,5 96:15 99:1,16 100:2,7 101:3,21 109:1 114:2 114:9 116:13 130:10 132:6 138:19 139:6 144:13 146:18 148:20 148:21 149:6,22 150:15 151:17 168:19 173:18 175:11 180:25 181:9 185:5 189:11 192:1,24 199:21 201:22 211:14 216:10 216:14 224:4 233:23 237:13 240:4,10,12 243:10 244:9 basis 55:1,14 65:12 129:3 131:5 149:8 152:12,14 164:19 202:17 batch 23:23,24 25:3 67:5 244:12,16,24 batch-house 24:14,19 68:8 Bates 28:24 31:2 32:6 34:13 42:7 47:22 52:8 54:2 58:16 62:15,17 63:22 69:16 71:2 74:5 76:3 82:19 86:17 88:7 104:3 106:1 113:15 119:3 147:12 150:3 152:25 153:11 158:22 159:12 161:2 162:16,18 163:14,22 166:5 167:22 169:4,7,10,19 170:21 171:14 172:19 174:19 176:13 178:11 180:5 182:7,20 193:20 197:15 200:5 214:8,12 220:3 223:16 232:19 beans 175:22 became 7:12,22 8:2 15:19 17:12 90:22 139:1,3 167:4 become 8:7 179:10 beef 11:5 before 1:20,24 3:17,18 17:18 25:20 42:24 48:1 51:21 52:24 62:17 76:8 80:10 118:3 121:15 131:14 131:15,17 133:8 136:11 139:11 141:3 144:8,8,9 150:23 151:22 157:11 164:5 170:6 177:2 202:11 202:14 203:16 206:13 206:25 207:3 224:2 225:15 243:7,13 244:11 248:8 bef rehand 206:2 began 121:24 begin 6:18 150:22 beginning 30:23 38:12 begins 54:16 behalf 1:17 17:4 18:13 21:15 248:13 behind 96:18 102:20 152:8 238:10 being 9:1,7 14:24 21:22 26:10 27:8 40:8 47:14 65:17 84:12 126:12 130:17 131:22 143:7 151:9 153:14 185:7 218:10 219:18 233:11 234:8 236:24 belief 120:20 181:15 believe 25:6 34:8,10 93:21 130:7 139:20 148:9 171:18 173:25 179:16 183:7 184:25 188:10 190:23,24 191:2 225:13 226:7 227:12 231:13 237:21 240:16,16,21 241:8 believed 213:14 238:14 below 40:11 47:6 104:23,25 215:7 belt 157:24 180:23 181:1 215:25 234:1 240:11 241:9 benefit 62:4 benefits 24:12 56:6,7 56:12,15 beside 71:12,24 besides 8:25 best 52:17 113:24 175:7 192:5 better 28:14 32:18 35:5 41:5 56:16 73:3,11,12 105:12 149:15 159:23 160:17 167:25 173:8 173:11,11,13,20 181:8 197:25 198:1,9 198:14,15 207:7 208:25,25 209:18,18 221:11 225:5,16 242:4,22 244:14 between 3:3,8,11,15 34:18 37:24 47:4 55:16 69:2 129:4 132:13 161:17 208:12 211:11 214:15 231:9 big 14:5 38:19 51:14 52:1 137:24 152:6 206:4 222:12 bigger 136:18 216:6 biggest 56:19 bill 96:19,24 98:9,21 99:19 100:2,5,19 101:15 103:9 billing 76:14 Billmar 6:16,19 7:2 8:5 8:6,14 149:20 birth 6:8 bit 8:4 15:18 73:19 81:3 84:10 115:7 128:10 132:7,12,21 143:11 201:20 bitter 201:20,21 blah 221:7,8,8,8 Blankenship 2:4 blindly 52:14 blow 160:2 183:9 186:9 blowing 213:25 Blvd 2:10 board 121:16 240:5,9 Boar's 43:6 Bohonek 43:2,3,6 166:16 173:6 178:16 178:17 186:16 220:14 Bohonek's 173:17 boiling 62:3 bologna 94:18 99:10 booth 141:10 boss 51:10 Boston 40:5 78:22,24 both 5:23,24 23:22 28:17 35:7 38:25 44:8,16 47:15 84:1 98:12 104:15 112:23 140:12 144:1 152:21 221:12 235:23 236:2 bottlenecks 19:22 51:16 bottom 71:7,21 72:18 85:2 150:3 155:13 bought 41:19 52:25 144:6 169:2 196:15 243:5,25 box 89:5 90:20 237:13 break 12:2 119:16 209:9 236:15 breast 46:18 58:10 95:24 181:24 182:4 breasts 180:12 188:11 bridges 135:17 briefly 114:2 briggs 1:16 5:1,5,7,9 6:1 7:1 18:11 23:25 30:2 42:6 74:12 86:23 109:9 227:25 236:21 247:7 248:7 bring 27:2 201:13 237:8 British 179:13 broad 110:4 Broadway 2:6 brochure 166:20,21 167:1 broker 100:25 brook 1:18 2:12 16:16 17:22 93:4 111:10 239:20 240:1 245:9,9 248:5 Brooks 66:12 74:15 145:15 146:3 186:22 206:20 broth 197:6 brought 22:23 122:9 229:8 245:16 brown 12:24 20:10,13 21:1,9,23 59:24 86:2 105:10 110:15,25 112:11 175:14,23 181:3 207:13,16 242:8 browned 12:12,12 44:16 46:2,17 49:14 60:7,9,11 77:3 84:13 229:13 br wning 20:6,6,23 23:12 24:1 58:24 59:7 60:15 109:13 110:19 111:23,25 142:20,21 152:13,15 152:18 177:20 194:23 195:6,20 196:3,20,24 197:4 228:1 241:11 241:16,21 242:14,17 243:21 BTU's 223:12 224:5 237:9 budget 51:3,6 build 172:25 173:3 176:18 180:16 188:8 188:15,25 189:3 building 10:3 178:2 built 13:9 138:5 149:20 187:21 188:7,10,19 189:19 190:10,15 225:8 bunch 84:22 99:7 132:16 burn 35:21,22 135:17 burned 167:11 burner 140:25 burnt 36:2,10,13 business 4:11 7:20,24 10:4,19 16:17 21:16 26:4 30:6,14,19 77:7 122:22 123:17 228:16 businessman 222:7,10 Butterball 131:24 buy 11:17 16:13 21:21 26:6 64:1 175:24 235:21 238:11 buying 40:18 41:2,2 67:8 208:23 <hr/> C C 184:12 185:3 186:3 194:1 CA 2:11 cabinet 176:19 177:15 cafeteria 78:10 cajun 94:18 102:9 calculations 190:7 caliber 220:7 call 30:9 41:7 67:16 91:11 113:24 115:15 117:15 126:18 138:9 195:13 called 26:13 108:11 113:25 114:9 122:23 124:6,18 126:14,15 126:16 127:1 130:4,5 138:3,12 143:20,21 146:8,9 165:17 calling 126:21,22 140:12 calm 127:14 came 7:25 8:3 9:23 13:18 14:6 69:10 116:9 121:15,17 131:4 136:23 151:12 154:5 155:2,25 156:14,15 157:2 170:13 181:1 184:2 187:1 189:23 221:2,4 235:20 242:12 243:15 243:17 248:8 camp 131:3 capabilities 231:18 capability 79:23 capable 222:24 232:9 capacity 81:11 202:1 242:6 capita 107:1 capital 137:7 152:3 176:15 232:11 caramel 184:15 185:2,4 185:11,13,15,23 195:2,12,17 196:11 carameling 207:18 Cargill 127:19 134:17 226:8,24 227:3,12 Cargill's 227:10 Carol 33:15 Carolina 127:18 134:17 206:24 226:8 226:24 227:3 Carolina's 227:11,13 carried 18:2 carrier 103:10 case 1:8 95:20 119:24 175:20 204:3,10,13 216:13 239:20 cases 24:21 95:16,17,18 97:5,22 102:6,9 183:24 castro 2:3 4:2,3 5:4 17:8 22:11 29:4,8,18 29:25 30:2 33:5 40:23 46:19 53:24 54:1 56:13 82:8,19 83:23 85:1 86:13 87:10 89:10 92:9,15 105:25 110:12 111:9 112:21 113:4,7 115:21 120:1 121:1 121:25 124:15,18 125:19 129:9,15,20 143:17 146:7 148:18 163:2 177:9 193:23 199:8 204:15 219:21 227:15,19 229:7 230:8 231:24 233:8 236:18 239:8 244:21 245:4 246:7 Castro's 163:24 categories 120:7,8 category 58:21 cause 1:24 causes 25:1 94:8 causing 224:9 cavemen 110:11 Cawthran 29:24,25 celsius 50:10 72:20,22 certain 1:24 26:24 68:6 111:12 124:21 163:17
--

<p>216:19 230:12 241:11 certainly 40:9 68:11,16 83:22 115:10 198:18 213:24 230:17 232:3 certainty 202:12 CERTIFICATE 248:1 certify 248:4,14 chain 216:6 222:14,18 chance 30:3 57:17 61:23,24 change 16:11 60:21 63:20 243:18,25 244:4 changed 63:3,11 174:9 234:21 changeovers 66:15 changes 37:11 changing 20:24 244:24 characteristic 105:15 characterization 41:9 characterize 209:5 charge 64:14 104:11 CHARLES 2:12 Charlie 116:7,8,9,18 119:14 121:14 122:20 123:23 124:24 140:2 140:8,13 146:17,20 146:24 147:2 chart 165:18 174:6 175:14,15 charts 175:10 cheaper 41:6 172:4,8 173:21 check 150:4 cheerleader 166:11 cherry 59:4 Chicago 78:25 79:2 chicken 15:18 16:24 40:10 166:23 188:11 chill 157:22 171:6,13 171:20 172:3 243:23 chiller 43:18 157:12 169:3 216:14,16,17 219:5,20 224:14 237:7 chiller's 217:3 chilling 31:14 192:8,18 218:2 chips 21:1 218:5 choice 242:5 chop 12:3 Chris 124:4 126:13 226:12 Christie 2:9 chronological 30:17 43:25 chronology 22:21 CIP 64:3,4 168:12 169:23,25 170:7,10 170:14,14,15,17 172:9 circumstances 209:21 City 1:19 2:7 49:5,6,7 49:16 65:6,23 138:11 174:17 191:1 248:6 CIV-01-347-C 1:8 claim 111:16,22</p>	<p>clarification 146:10 clarify 121:2 classes 8:23 classic 94:18 clean 54:8 237:10 cleaning 64:4 167:13 169:25 237:16 clear 50:18 133:24 clearly 133:11,15 204:20 245:15,16 clerk 248:15 client 122:10 clients 5:24 18:11 close 31:18 216:20 closed 155:12 clostridium 68:10 coated 110:20,23 112:4 112:8 coating 110:17 111:25 186:9 Cobb 43:5,7 145:14,21 146:3 186:18 Cobb's 225:18 code 44:22 45:13,15 46:12 85:7 89:7 90:7 90:22 96:23 97:10 107:18 codes 45:5 89:19,20 91:10 collaboration 229:16 230:6 collaborative 69:2 113:12 137:6,10 174:21 184:4 187:13 213:22 229:25 college 6:5 7:6 9:7 106:7,7 colo 175:11 color 20:24 23:21 36:22 37:25 39:12 47:10 59:8 75:6,8 85:22 105:9,9,12,13,15,16 110:16 111:1 112:11 175:6,10,14,14 176:5 185:7 232:22 Colorado 2:10 coloring 184:14,17 185:6,8,23 187:6 189:12 195:2,12 196:12 colorometer 65:21 colors 70:21 175:9 column 36:22 97:9 come 17:25 50:4 61:2,5 64:19 70:24 87:19,21 100:24 138:11,16,18 140:17 156:25 157:4 170:12 183:21 212:17 219:25 220:12 222:5 225:24 230:10,15 236:11 comes 35:12 100:3,5 comfortable 232:15 coming 16:7 72:1,2 148:16,19 203:19 213:20 224:1 242:9 commerce 139:11</p>	<p>246:3 commercial 23:14 86:5 86:6 96:10 commercially 83:11,14 92:5 228:2 245:10 commission 247:11 248:21 commitment 211:23 commitments 130:23 committed 161:11 211:24,24 commodity 16:6 communicate 34:16 115:24 117:4,9 230:21 communicated 141:10 communication 141:14 communications 230:20 companies 78:22 80:21 93:9 134:16,18 148:22 213:10 221:12 230:7 company 5:15 7:4,15 10:17,22 11:4 13:15 14:8 16:10 17:24 18:22,24 19:2,15 21:16,18 22:2 23:11 24:16 27:23 30:7,14 35:4 45:11 51:6,11 53:5 65:5 77:7 81:9 98:1,3 107:12 109:22 116:4 126:2 132:18 148:6,13,14 152:2 156:15 179:2,4 215:5 219:3 228:3 232:1 234:23 company's 5:22 compare 169:4 182:16 comparison 22:18 32:4 34:1,12,18 42:3 47:3 52:7,10 162:21 163:10,14,19 comparisons 44:14 51:22 161:16,22 Competency 206:4 competitors 138:8 compiled 30:12 34:6 complaints 237:1 complete 5:8 40:22 74:16 completely 188:22 218:18 completion 99:12 complex 14:1 components 40:11 composition 197:2 comprising 111:24 compromise 212:17 computer 240:12,15,19 conagra 1:12 5:25 18:14 108:24 115:17 115:23,24 117:5,9,15 118:25 119:6 121:9 123:4 127:18 129:25 131:22,23 134:7 135:1,5,10 136:17</p>	<p>140:12 213:25 226:15 230:16,22 concentrate 205:17 concept 41:12 233:16 233:16 concepts 230:15 concern 35:23,24 62:10 68:7 concerned 36:14 139:14 141:24 167:8 concerning 215:4 230:22 concerns 167:18 concert 50:3 conclusively 102:15 condensation 154:23 condition 222:17 Conditions 74:8 conducted 47:11 confidence 228:16 confident 207:4 confidential 29:5 207:23 208:4,9,11,19 210:24 213:3 214:5 229:4 239:17 confidentiality 228:13 confined 237:14,15 confines 30:6 confirmation 4:15 53:9 53:14 96:18 99:17,18 100:11,17,18,20 confirmed 176:20 connects 158:14 conscious 62:10 consider 229:11 consideration 229:6 considered 211:16,17 211:19 consistency 24:23 37:1 37:4 73:3,11 225:6 consistent 177:1 constitute 209:4 constitutes 133:14 consultant 69:23 126:8 consumer 55:24 106:21 consumption 107:2 contact 18:24 19:3 109:7 122:21 164:15 166:13 contacted 159:17,19 160:20 161:4 164:11 contacting 160:24 contains 196:25 197:5 contaminated 57:18 context 227:9 continually 51:18 continue 237:8 continuous 12:23 13:3 19:10 24:15 25:2 31:15 42:22 57:5 64:4,25 74:19 149:8 152:11,14 164:19 169:25 244:6,13,16 244:25 continuously 8:11 contract 215:10 contractors 173:10</p>	<p>contractual 217:5 control 67:12 176:21 177:12,24,25 178:2 181:7 189:11,11 239:24 240:3 241:1 244:14 controlled 240:12 controls 25:1 178:8 240:5,19,19 241:6 controversy 180:14,19 181:19 248:9 convection 42:22 191:15,21 Convent 2:15 conventional 191:14,16 191:23 conversation 124:9,13 124:14,19 125:1,5 126:24,24 128:4 130:2 132:11 133:4 134:2 136:5 137:14 137:14,18 138:1 139:18 141:17 144:16 144:23 146:12,13 149:17 160:15 166:25 210:23 226:4,9,10,22 227:3 conversations 121:24 124:2,17 126:10 141:1,2 143:16 146:6 165:6 172:18 226:15 226:17 conveyed 182:21 183:8 184:13 186:8 187:5 192:7 conveyor 154:12 240:20,23 241:2,9,15 244:5 conveyors 188:17 conveyor/spiral 157:24 cook 40:10 50:9 56:25 188:10 cooked 12:18 13:2 16:8 75:5 85:20 86:1 87:18,20 110:7 cooking 4:13 12:20 23:17,18 24:15 47:25 50:10 55:20 166:22 193:3 200:7 cool 217:4 cooler 193:2 cooler/freezer 151:16 cooling 31:9 41:1 105:8 151:12 153:23,25 Cooper 138:17 copy 29:5 32:18 54:9 109:15 cord 39:5 core 202:14 203:3,13 203:15,21,22 204:17 206:13 corner 32:16 85:3 Corporation 1:5,7,13 correct 5:15,16 17:11 21:8 25:8 35:10 38:8 38:14 39:12 43:20 44:15 47:2 48:24</p>
--	--	--	---	--

50:22,23 57:19 58:2,5 60:11 66:9 91:14 92:5,11,14,20 93:10 93:11 96:2,11 98:4,5 98:11 104:20 120:5,6 120:12 123:7 126:14 142:9 143:19 153:8 164:8,9,10,13,23,24 169:16 170:22 171:8 173:24 176:9 177:4 182:11 189:17 190:7 190:23 193:25 194:7 195:16 200:13 209:20 214:13,21,22 221:19 225:12 230:13 233:21 234:3 237:21 240:21 correctly 65:19 181:1 240:18 c rrespondence 141:6 cost 7:12 8:17,18 9:13 9:15 11:25 12:8 19:25 22:8 35:1 42:2 54:25 56:7 62:18 63:19 95:8,11 96:1 178:5,6 211:11 216:11 220:21 234:17 236:2,5 costs 9:19 12:3 25:12 57:12,13,15 217:16 counsel 3:4,9,12,16 92:16 115:22 116:2 118:24 228:8 229:20 230:25 232:20 248:14 count 10:1 counter 11:15 county 1:19,23 247:9 247:14 248:2,3,6,19 248:25 c uple 27:2 80:11 152:4 172:14 180:2 c urse 30:13 132:8 c urt 1:2,22,25 3:6 239:22 248:3 cover 143:13 Cox 147:25 148:13 create 37:14 201:20 created 191:13 203:2 228:10 creates 228:10 237:14 credit 184:9 crisp 20:21 110:14 critical 43:12 CROSS-EXAMINA... 4:2,4 119:19 239:15 CRPF05140 119:3 Cryojet 151:16 Cryovac 224:22 current 55:16 currently 39:20 190:25 221:13 custom 210:4 customer 100:10,25 235:13,15 customers 245:19 cut 101:14,19 cuts 24:20,20 cutting 201:22	cut-up 15:25 cycle 12:17,19,19 D D 4:1 22:3 34:15 43:10 43:10,13 186:7 dah 190:2,2,3 daily 51:11 83:25 86:13 86:20 dark 26:10 105:13 darker 37:22 data 4:13 47:3,25 50:6 66:20 67:1 144:19 206:8 date 6:8 27:13 48:3 62:23 86:4,15 89:7,11 89:22 90:23 91:8 93:12 96:23 97:10 101:12,13 108:23 122:18 123:22,23 131:12,19,20 149:11 150:24 163:11 168:23 182:13 210:3 dated 33:14 47:1 62:22 67:12 70:10 71:5 74:6 79:12 84:6 89:14 108:24,25 162:6,17 178:14 214:23 223:20 dates 88:11 200:5 David 18:19,20 20:2 22:9 26:8,13 28:5,13 40:21 41:11 50:2 79:20 80:1,2 81:17,20 81:25 82:9 122:23 123:11,18 124:3,10 124:12,13,21 126:10 128:5,7 130:12 132:13 133:18 134:9 134:9,22,25 135:6,7 138:9,12 140:21 141:6 143:22 144:1,3 144:14 165:3,8,17 166:5 170:23 172:12 173:15 178:17,24 179:1,8,11,18,21 181:20 208:21,24 209:18 210:1,20 211:4 212:3 214:21 215:2 216:11 217:15 221:2 222:21 226:4 226:16 227:7,7 233:3 237:23,25 239:5 David's 19:14 50:3 131:2 180:21 191:25 222:7 day 6:21 22:9,9 26:8 63:5 67:5 86:21 87:13 91:19 98:17 101:20 131:8 144:15 161:13 208:20 209:13 217:11 238:9 242:11 242:16 247:10 248:12 248:19 days 93:18,18,19 161:17 dead 140:19	deal 51:14 59:12 81:19 81:20 234:6,10 dealing 37:7 179:17 dealings 179:21 deals 47:3 56:4 104:18 dealt 37:6 Dear 109:9 debate 198:6 debating 197:21 deboning 16:5 December 6:10 67:12 178:14 decide 173:1,4 decided 174:5 180:15 237:17 decides 115:3 decision 39:11 decisions 180:4 deep 127:16 129:4 defend 131:1 135:23 defendant 1:14 2:8 5:25 18:15 define 12:1 131:23 definitely 73:17 135:18 definition 142:25 195:9 195:11,17 207:11 216:17 definitions 192:1 degree 6:12 7:11 8:19 8:24 9:12,17 212:11 233:15 238:23 degrees 35:21 37:8,24 50:10 71:17 72:19,20 72:21,22 154:1 156:9 156:9 157:12,23,23 158:1,2 167:10,20 187:9 192:9,12,20,22 192:25 197:12,19 198:12,13 199:12 200:19,19 201:9,24 202:16 203:10,20 223:10,13 224:8 231:5,9 Delaware 1:13 deli 7:17,19 8:1 10:13 10:25 11:3,8 175:20 delis 11:13 deliver 62:2 93:25 101:16 113:10 175:5 175:9,13 212:3 218:10 236:7 delivered 96:16 212:8 delivering 245:18 deluxe 94:18 95:1 demand 107:8 Dennis 118:23 denoted 39:9 department 46:24 150:5 depend 243:1 depicted 34:13 deposition 1:15 3:4,10 3:17,18 4:7 5:19 18:11 120:5,10 121:12,23 122:1,5 162:16 239:17 248:13 describe 78:16 131:9	136:12 165:2 222:17 described 158:21 159:12 161:1 170:21 182:11 describing 226:5 description 75:12 186:3 187:18 193:5 193:19 194:5,10 230:23 descriptions 230:19 design 180:21 189:23 190:3 215:20 216:19 217:10 218:9 234:15 237:9 239:25 244:15 designed 176:19 222:23 239:24 desired 175:6,9 desires 234:20 detail 36:21 44:10 75:17 125:12 164:2 detailed 44:7 details 22:24 determine 200:12 determined 180:10 determines 241:2 devastating 10:5 develop 110:25 112:11 155:5 159:10 developed 154:17 155:18 157:17 158:6 158:23 169:6 183:6 183:17 229:24 245:1 development 46:24 232:22 dextrose 195:22 dialed 66:4 dialing 70:19,21 72:12 diamond 67:15 diamonds 67:16 dictionary 143:2 difference 37:24 55:16 differences 34:17 different 14:20 19:11 35:2 44:11,11,22,23 45:5,10 48:6 59:11 69:24 70:1 76:20 81:2 89:18 105:14 152:19,19 159:8,8 210:1 211:18 243:6 DIRECT 4:2 5:4 direction 17:24 63:12 70:3 directions 174:10 directly 158:13 179:22 230:21 Director 148:1 disadvantages 24:14 25:5 disagree 212:6 disclose 210:11,15 discovered 225:2 discrete 147:4 discuss 109:7 124:6 discussed 122:11 137:13 141:20 144:22 146:6 199:7 215:2 discussing 109:5	discussion 163:25 discussions 122:4,7 164:25 dismantling 233:23 237:6 distance 132:13 district 1:2,3,24,25 division 6:16 13:20,23 14:15 Dixie 78:24 doctors 148:23 document 30:24 31:2,3 31:4 32:11 35:4 42:2 42:6,9,24 44:4,6 50:24 52:8,23 54:15 54:18,20,25 55:4 63:22 64:9,13 66:10 67:10 68:19 69:17,20 76:2,4,8 79:18 82:21 83:25 84:3 86:17 87:25 88:7 90:17 91:15 92:1,23,24,25 93:8 96:13,14,25 97:17 99:14,20,21 100:6 101:3,6 103:2 104:3 105:24 107:11 107:12 108:18 116:24 118:3,21,22 119:5,8 143:10 147:12 151:14 152:24 158:21 161:25 162:16 163:8 167:22 168:1 172:1 174:4 176:12 182:8,13 200:16,23 214:8,11 223:16 224:17 documentation 72:14 123:13 130:15 131:5 133:6 137:21 141:23 161:22 201:10,13 202:8 documents 28:16 30:5 30:8,11,12 44:6 49:22 49:23 76:10,13 91:6 92:2 99:8 102:15 119:25 120:14,15 121:3,11,13,20,20 123:19 124:22 137:12 139:8,10 144:4 208:8 239:19 dog 52:2 140:19 doggone 170:10 doing 9:17 24:12 31:15 36:3 39:20 40:9 64:17 65:3 66:13 68:16,23 73:12 80:9 116:14 123:6,16,16 136:20 151:18 168:20 168:25 173:9,14,24 174:1,11 209:1,19 210:20 220:15 dollar 23:4 218:1 dollars 51:15 55:19 83:21 95:14 107:14 152:3 211:12 216:22 222:8 236:8 245:25 246:5 done 47:14 64:21 77:5
--	---	---	---	---

80:8 87:20 113:8 138:24 140:10 162:11 165:22 171:22 172:7 210:22 211:13 213:17 218:8,13 223:12 doodled 54:11 d uble 225:22 d ubled-edged 62:12 D w 126:2 d wn 12:2 24:20,20 35:11 38:4 39:8 40:11 45:20 47:5 52:14 54:12 65:16 67:15 72:17 73:25 84:14 89:17 97:1 133:20 138:11 143:11 145:10 161:18 165:17 166:15 172:24 181:1 181:12 188:22 198:11 198:23 202:3,4 204:5 219:16 221:12 Downer's 79:2 Dr 19:18 69:21,22 70:15 126:5,6 145:3 200:3 dragged 132:19 dream 140:5 dredge 64:7 168:15,18 drench 40:14,25 43:19 47:4 72:9,11 168:24 169:15 172:10 176:18 177:15 184:13,22 224:21 225:3 drenching 105:6 155:8 156:1 169:10 180:21 drive 49:16 215:25 216:7 222:15,18 driven 240:11 drizzle 181:18 drugs 148:21 dry 20:14 duces 119:22,25 120:3 due 101:22 107:7 197:25 duly 5:2 248:8 dummy 135:16 duplicate 54:3 during 6:21 44:17 130:1 134:1 163:24 230:18 duties 143:4 duty 188:16 d/b/a 1:11 E E 4:1,5 187:4,18 193:22 194:1 197:15 each 12:5 120:18 134:21 151:25 153:4 176:3 183:23 184:10 216:24 241:14 earlier 23:16 26:3 46:23 56:17 92:18 127:25 131:20 134:24 139:21 152:9 200:2 205:8 218:2 242:1 earliest 150:25,25	151:5 early 19:1 133:15 139:20 144:20 197:20 198:2 earnest 222:22 ease 237:11 Easter 176:1 eat 78:7 Eckridge 131:25 economic 56:15 57:12 educational 6:2 Edward 5:9 effect 130:6 131:11 135:13 138:15 202:9 209:24 227:8 effective 237:19 effort 69:2 113:12 140:16 174:22 187:14 213:22 229:25 efforts 184:4 eggs 176:1 eight 71:3 111:19,21 202:21 either 23:16 41:5 50:2 50:5 63:8,12 78:1 123:2 130:4 137:18 138:17 163:10 183:21 184:9 213:5 232:5 248:15,16,16 elaborate 171:11 227:16 239:3 elaborated 206:1 electric 38:18,19,21 39:4 electrical 190:8 215:24 216:9 220:6 234:4 electricity 223:14 electronic 240:4 element 241:18 elementary 153:2 Eleven 162:3 eliminate 51:17 else's 131:3 employed 116:7 employee 104:14 employees 27:21 65:5 employment 6:18 enclosed 109:15 end 47:7 55:22,24 77:23 111:14 127:16 190:6 192:17,22 197:23 212:4,16 219:7,13 234:21 238:15 endeavoring 211:15 ended 128:18 130:4 168:25 172:5,10,16 173:24,25 221:1 232:5 energy 110:21 112:4 133:22 137:8 engineer 43:4 81:16 142:13 166:17 engineering 12:7 43:13 179:5 205:9 216:3 enhancing 197:1 Enid 49:5,5	enough 123:17 190:8,9 190:9,10 202:1 215:24,25 219:14 ensure 18:1 68:17 222:16 enter 21:16,20 26:4 entered 15:19 29:16 206:14 239:21 entire 14:8 194:16 230:4 entirely 217:9 entitled 75:5 109:12 entrepreneur 179:4 entry 180:13 environment 24:25 environments 191:4 envisioned 156:21 equal 210:14 equals 156:10 equilibrate 192:12 equilibrated 224:8 equilibration 192:16 192:23 equipment 19:16 80:22 80:25 81:3 123:1 135:10 137:4 158:16 167:9 170:13,23 171:7,12 173:21 180:17 189:19 190:4 198:2,15 208:23 215:5 234:8,11 especially 127:23 establish 210:21 established 92:3,10 establishment 78:11 establishments 11:18 estimated 42:2 evacuate 38:25 39:3 evaluated 35:16 36:3 evaluation 47:11 48:22 evaporation 56:2 even 37:9 52:1 61:14 117:14 120:2 123:9 123:21 131:14 135:25 139:2 145:4,5,6,7 146:11 152:22 197:20 198:5,11,12 216:20 229:19 234:13 236:8 evenness 36:25 37:4 event 248:17 eventually 77:25 ever 25:21,21 30:16 47:19 114:5 115:17 115:23 117:4,13 118:2,21 119:8,11 134:5 207:20 208:1 212:21,24 214:5 230:15 236:23 every 14:1 77:2 80:25 91:19 205:12 242:11 242:16 everybody 26:19 115:8 167:5 everyone 10:2 66:23 81:9 134:11 153:4 everything 24:24 64:20 66:4,16 140:11	145:16 189:3 212:9 212:10 229:22 233:23 234:15 235:12 237:6 evidence 127:24 245:15 eviscerator 9:1 exact 70:21 71:1 175:4 175:4 exactly 19:14 26:2 28:3 39:21 53:2 67:9 72:12 142:23 173:25 175:2 188:1 189:8 191:18 210:1 213:6 220:22 235:23 examination 4:2,3 5:4 227:19 248:10 examined 5:2 248:10 example 20:12 21:3,4 108:10 199:19 excellent 105:9 except 3:13 129:11 237:7 exception 21:7,8 107:21 233:13 excess 186:9 223:25 224:9,10 232:22 excited 22:25 80:2,2 127:13 151:13 167:4 167:17 excuse 35:14 45:10 47:23 104:7 200:21 execution 81:6 187:3 203:6 exhibit 4:6,8,10,12,14 4:16,18 5:18,21 28:21 50:8 52:20 120:15 162:15 exhibits 22:16 existence 190:25 existing 155:20 158:7 158:15 exists 130:7 155:20 expect 228:12,21 229:5 229:6 expectations 210:8,10 expected 105:21 211:22 228:23 expecting 205:6 expects 228:15 expenses 76:16 experience 80:21 214:2 237:22 239:4 experiencing 72:3 106:10 experimental 245:22 expert 191:17 expertise 195:24 experts 69:11,12 expires 247:11 248:21 explain 11:11 34:12 37:5 49:8,11 58:16 71:9 explained 25:25 116:13 135:6 141:22 152:20 167:2 explore 224:21 explored 124:22 exploring 19:12	expose 37:18 exp sed 37:13,14 110:21 111:1 112:12 204:18 exposing 112:3 202:14 Extended 67:18 extent 121:4 132:10 external 184:14 185:6 extra 37:21,22 238:25 extract 31:7 extraction 31:9 extreme 35:25 159:25 extremely 203:1 219:18 eye 180:1 211:5 eyes 175:25 F F 192:6 193:5 203:9 facet 14:1 facilities 14:21 facility 14:17,18,19,21 14:24 15:21,25 16:13 16:19,23,24,24 65:6 76:18 78:6 82:1 83:9 86:25 103:17 fact 39:22 120:23 121:14 128:9 129:6 139:9 141:5 159:4 163:6 173:23 179:12 179:19,20 191:8 194:2 197:23,25 215:20 221:15 231:17 factors 39:10 faded 224:11 fading 223:25 225:7,7 232:21 Fahrenheit 71:18 72:19 72:21 187:10 192:10 192:12 197:13,19 199:12 201:9 203:11 203:23,24 231:10 failure 211:25 fair 17:2 25:10 27:4,8 35:9 41:7,9 48:17 57:22 68:7 94:5 105:18 160:19 162:10 204:22 210:9 231:1,8 233:8 234:6 235:1 244:3 fairness 131:6 faith 140:15 fall 18:21 21:13,13 26:9 falsely 220:5 familiar 11:19 18:16 24:7 fans 233:24 237:7,8 far 92:2 120:7 139:13 141:23 173:2 218:9,9 232:10 fashion 31:16 fast 73:8 198:9 242:3 faster 201:17 241:9,22 fax 141:7,11 FCC's 70:2 February 74:6 108:2,5 108:25 113:14 199:6 feed 155:10,10
---	---	---	---	---

feeding 78:8 feel 17:19 46:11 227:21 feet 154:13 155:9,11 156:10 157:11,24 Feld 2:14 Fellers 2:4 felt 41:3 61:2,20 131:1 131:4 140:14 173:9 181:6 219:7 238:4 few 28:16 39:7,7 65:24 227:20 239:16 fifth 35:12,14 111:20 figure 127:10 figured 128:2 figuring 219:8 file 30:9,10,16,18 33:15 121:21 filed 5:20 29:22 139:12 144:9,10 fill 94:11 filled 101:5 filtered 184:17 finally 158:13 financial 9:17 18:3,4 106:13 find 68:2 143:18 198:19 202:8 finding 213:10 fine 69:5,6 120:25 121:6 143:3 174:24 175:3 205:24 finish 84:15 171:10 243:21 finished 38:12 113:6 139:16 192:11 243:9 fire 7:14 9:23 10:5 33:2 33:4,20 61:23 163:6 216:1 220:4,11 221:13 fired 136:20 151:18 first 5:2 7:3,4 8:16 9:10 11:25 13:11 14:10 18:18,24 19:2,6 21:14 26:6 30:24 31:1,4 32:1,10 45:19 48:10 50:11 63:2 68:4 69:15 70:10 71:9,10 71:16,24 84:7 86:15 87:10 99:23 100:3,6 107:10,22 109:8,9 114:11,18 115:21 119:9,20 122:12 126:12,24 130:2 132:9 136:5 137:14 143:12,17 144:14 146:12 147:20 149:10 149:16 153:23 161:4 162:5 180:7 182:17 207:1,6 214:25 217:3 244:20 five 28:25 37:19,20,21 37:22 85:8 151:15 155:9 156:9 176:15 188:24 205:4 219:24 five-minute 119:16 fix 80:11 105:16 218:25 220:21 221:4,19,21	221:24 238:18 fixed 216:5 218:17 220:19,20 221:17 fixing 216:12 flash 156:19 flat 216:15 flavor 20:25 21:2 35:14 36:2,10,13 59:1,8,9 61:4,8 152:20 197:6 flavoring 197:1 Fleming 93:3,9 94:6 97:23 103:17 flow 30:9 40:7 42:21 44:8 55:9,18 57:5 75:23 94:21 98:17,24 99:5 102:4 104:23 105:7 107:16,24 108:4 160:7,8,9,11 165:18 168:10 169:21 187:19,25 188:3,9 202:15,20 203:17 206:22 209:15 229:14 244:6 flows 191:22 focusing 65:19 205:10 foil 20:19 folks 73:8 176:11 followed 22:5 69:14 following 65:20 86:21 87:22 follows 5:3 food 1:4 10:16 11:9 18:12 47:25 57:12,15 76:5 78:2,3,5,6,25 121:9 214:3 foods 1:6,12,18 2:12 6:1,16,19 7:2 8:5,6,14 13:14,18 14:5 16:14 16:15,16 17:22 18:13 18:14,23 23:7 24:10 26:4 49:25 67:11 76:7 108:25 112:17 119:1 131:25 159:9 160:21 164:11,15 168:8 169:6 170:4 171:5 174:22,24 176:7 178:21 180:9 180:16 181:25 183:2 183:5,13,16,21,25 184:2,23 186:12 187:11 188:4 190:13 190:20,21 193:16,21 194:7,18 197:9 201:6 206:16 212:22,25 213:13 215:14 221:18 225:17 248:5 force 7:22 forced 13:1 foregoing 248:4 forgotten 145:4 form 3:14 16:6,8 22:1 40:20 56:11 82:3,14 83:18 84:20 87:3 92:7,13,16 105:23 109:25 111:7 112:19 113:2 115:20 129:11 129:21 157:3 163:3	177:10 193:24 219:22 219:23 228:19 230:3 231:12 239:9 f rth 67:22 109:22 F rty 158:2 forty- ne 63:19 forward 82:20 201:14 222:3 245:16 found 16:12 144:12 145:2 202:25 four 8:23 43:15,16 59:10 69:18 117:6 131:14 136:10 141:9 151:15 236:7,10 fourth 35:11,13 58:17 58:18 65:16 67:15 frame 178:3 frank 147:2 frankly 205:6 207:24 222:21 free 3:5 223:25 232:22 freed 57:9 freeze 91:7 freezer 105:16 224:6 233:13,14,19 235:7,8 235:10,25 236:1 freezing 31:18,19 193:4 free-lance 1:22 248:3 fried 60:10,25 61:4,8 61:15 62:13 fried-type 62:2 fried/Maillored 58:20 friends 128:8 friendship 129:4 front 142:2 143:13 144:2 147:14 165:19 182:8 210:6 224:21 225:9 fry 61:22 62:7 84:24 85:6 fryer 61:20 62:1 frying 60:16 61:5,9,19 fulfillment 96:14 full 188:22 fully 75:5 228:22 further 3:8,11,15 4:4 16:3,4,25 227:18 239:13 244:23 245:3 248:14 fuses 220:13	118:24 124:19 143:18 206:11 generalized 205:11 generally 14:5 77:14 genetic 126:3,4 gentle 160:6 gentler 160:4 166:22 geographic 78:17 gets 192:16 getting 8:24 23:1 56:21 61:24 133:17 137:24 151:17,24 172:16 205:1,16 209:22 210:22 218:19,21,23 218:24 224:5 236:4,5 give 5:10 6:8 7:1 50:25 70:25 142:24 184:8 189:1 206:7 221:5 225:5 238:12 given 140:9,15 190:12 210:18 247:8 248:18 gives 43:16 176:21 177:12,25 191:24 giving 25:5 64:16 70:2 93:5,6 116:23 172:14 goes 70:6 75:11 89:5,8 109:10 161:23 204:6 204:7 222:4 228:3 241:19 going 5:17 22:6 23:1 24:24 26:15,16,18,24 39:21 42:12,14 44:9 45:17,20 47:20 50:7 52:13 54:23 57:17 61:10,15 64:1,15,19 65:25 66:24 74:18,25 75:2,7 90:13 97:13 101:15 108:4 115:3 115:11 122:15 127:12 128:12 135:5,9,11,17 135:22 137:22 138:23 140:6,17,18 153:3,18 157:12 160:18 161:18 167:11,12 169:14,20 172:5,12 174:13 175:25 181:14,16 185:6,8 189:25 190:2 196:9 197:21 203:1 205:3,19 206:7 209:5 211:10 216:1 225:3 227:5 231:18,19 232:6 233:5 236:9 238:7,10,11,12,20 golden 105:10 110:15 110:25 112:11 gone 26:21 81:17 good 17:19 27:3 29:19 37:25 62:22 105:8 112:6 128:8 140:15 152:4 222:22 goods 93:20 Gott 118:23 gotten 140:3 gourmet 58:3 59:16,23 76:25 graduate 6:11 graduated 9:10	graduation 8:12,16 Grand 6:5 126:6 graphs 31:6 great 148:20 green 176:2,3 greene 1:20,23 248:2,3 248:6,19,25 greg 2:3 143:17,20,20 grew 7:20 grinding 16:4 grounds 123:9 group 6:17 44:6 70:8 76:10,24 89:18 100:12 171:23 183:18 Grove 79:2 growth 68:9 106:11,15 107:1 grunt 138:21 guess 40:15 74:3 123:6 129:2 143:2 176:15 176:16 177:22 201:10 219:6 231:14 Gump 2:13 Gus 52:24,25 53:7,7 guy 81:16 136:19 140:13 145:15 179:2 guys 9:25 125:2 132:9 136:18 138:9,13,21 160:14 216:4 218:25 219:7 227:13
---	--	--	--	--

H

H 4:5
Hale 2:9
half 7:7 15:7 55:19
95:14 132:18 161:20
220:2 221:10
ham 15:19
hand 28:15,19 99:23
115:7 118:9,20 247:8
248:18
handed 33:12 53:8
handle 190:11 191:2
215:21 220:8
handling 24:21 57:10
57:11,11
handwriting 33:9
163:7
handwritten 32:11
70:8,14
hanor 2:12 4:4,5 29:13
29:21 30:1 82:5,15
86:9 87:5 120:22
196:14 200:21 201:1
204:2,9,12 208:13
209:8 236:14 239:15
239:24 245:6
happened 19:18 63:2
122:22 123:4 136:18
162:24 170:12 172:2
202:5 210:2 231:20
244:13
happens 30:25 90:15
happy 129:7 172:13
218:19 236:12
hard 106:18 204:23
205:15

<p>hardwo ds 194:25 195:8 196:5 228:5 Hargis 52:24,25 53:10 Hauer 2:14 having 5:2 37:25,25 62:3,7 102:14 140:13 167:8 202:25 204:23 220:13 221:17 224:13 237:16 head 23:8 43:7,10 76:23 145:25 189:4 health 62:9 hear 115:17 125:9 139:25 heard 19:6,6 122:19 136:14 138:25 140:2 142:16 149:12,14,17 159:22 heat 20:14 31:7,10 35:20 36:9,12,19 105:7,17 159:25 160:4,12 187:5 191:10 192:24 193:1 219:14 heated 67:20 heating 20:13 36:20 38:17 68:6 112:5,7,8 heats 35:25 110:22 heavy 188:15 held 154:1 220:25 help 10:6 70:4 80:5 95:21 153:3 166:7 212:1 helping 105:15 159:17 her 62:25 63:8 64:23 herb 59:16 hereinbefore 248:12 hereto 3:16 herewith 248:13 hero 115:4 hey 80:10 133:19 151:19 Hickory 68:24 69:2,10 174:22 176:8 183:22 hide 147:6 high 6:3 24:5 35:20,25 36:9 37:9,10 160:12 173:18 191:20,20 198:8 211:22 212:1 231:19 242:20 higher 25:10,12 73:19 81:4,4 201:16 216:5 241:10,23 242:3 highlighted 117:25 highly 211:23,24 him 22:10 51:13,18,21 51:21 69:24 80:4 113:24 114:1,11 116:13 121:16 122:17 122:18,21 123:2,3 124:23 125:1,6,15,20 126:14,15,20,21 128:13 130:5,9 132:24 133:6 134:6 136:15 137:21,21 138:13,24 139:6 141:3,11,15,22 142:2</p>	<p>144:15,24,25 145:10 145:13 146:13,14,17 146:20,22,25 148:2 165:18,19 169:3 173:7 179:14,25 190:12 210:7,16,18 211:5 212:2,14 216:15 217:18 221:3 221:24 222:5 227:1 228:23 229:5 235:14 235:17,21 238:18,25 hired 13:13,17,17,19 historical 129:3 history 7:2 129:23,24 130:8 131:10 134:8 135:1,4,7 137:20 226:6,18 hit 175:11 246:5 Hockenberg-Newbur... 93:5 hold 74:4 98:7 155:14 189:1 212:14 222:3 holding 155:13 222:12 home 78:7 honey 45:22 48:15 58:3 58:10 77:16,18 90:2,3 94:16 95:24 108:12 honorable 210:21 hook 238:19 hook-ups 39:6 hop 131:2,3 hopefully 18:7 176:2 227:20 hoping 217:9 229:1 Hormel 136:17 horse 190:9 hospitality 121:19 host 176:11 hot 13:1 73:5,8 161:8 167:14 170:10 201:19 203:1 224:21 hotel 78:8 hour 217:4 223:6 hours 202:21,21 205:4 213:21 housekeeping 119:20 120:13 howard 2:8 18:19,25 19:3 21:14,17,21 23:12 24:9,16 29:1,8 121:8 122:4,8,11 124:3,10 126:10 128:5 129:12 131:9 132:24 134:22,25 136:8 137:15 138:2 141:2,17 165:3,8 166:5 178:17 179:18 204:19 211:4 214:21 217:15 226:4,16 228:14 237:23 239:5 Howard's 129:5 181:20 Hudson 13:14,18 14:5 16:15,21 17:9,10,13 17:13 18:23 23:6,6 24:10 26:4 28:7 48:9 49:25 51:9 76:7 91:13 92:20 103:11</p>	<p>105:20 111:4,10 112:17 152:3 159:9 160:20 164:10,15 168:8 169:6 170:4 171:5 174:24 176:7 178:21 179:16 180:8 180:16 181:25 183:2 183:5,13,16,21,25 184:2,23 186:12 187:11 188:4 189:16 189:22 190:13,19,19 190:21 193:6,16,21 194:7,18 197:9 201:6 206:16 212:22,25 213:13 215:6,14 221:18 225:17 245:8 245:23 Hudsons 23:2 Hudson's 67:11 150:5 human 179:6 hundred 63:18 hundreds 245:25 246:4 hurdle 133:13 hurt 61:24 167:11</p> <hr/> <p>I</p> <p>idea 7:25 123:10 150:20 151:22,22 154:4,8,16,19 155:1,5 155:5,17,21 156:3,13 156:15,18,20,23 157:1,2,4,16,19 158:3 158:5,8,9,10,17 166:11 177:2 181:22 182:4 183:2,5,13,16 184:23 186:12 187:10 193:5 194:2 225:14 225:16,18,23 245:1 ideas 230:9,15 ideation 125:14 identified 46:23 120:9 169:18 170:2 171:14 identify 28:22 42:9 44:5 55:4 63:23 66:11 69:19 74:14 76:4 79:19 82:21 84:1 88:8 101:25 108:22 151:5 II 42:21 169:21 Illinois 1:5 immaterial 203:5 231:16 immediately 66:5 77:4 192:7 impart 61:4,8 imparting 20:25 21:2 110:15 imparts 59:1,9 impedes 152:20 impinged 12:24 impingement 31:9,21 31:22 43:18 157:22 160:1 169:2 171:6,13 171:20 172:3,17 191:16,19 192:8 216:14,16,17 217:3 219:5,20 224:6,13</p>	<p>233:13,14 234:13,18 235:6,7,8,25 236:1 237:7 240:8 imp rtant 52:12 176:21 177:12,16 178:1 217:21 222:2 improve 70:4 80:5 Improved 109:13 improving 79:23 inability 217:4 inadvertently 163:1 inc 1:4,6,11 76:5 include 11:9 14:2 58:21 63:8,9 120:4 228:4 included 16:17 includes 40:13 64:2 increase 24:22,22 increased 25:2 216:8 indeed 99:19 100:21 137:1 223:10 233:2 235:16 independent 241:13 indicate 29:14 indicated 138:2 143:16 indicates 197:11 individual 125:18 179:15 184:1 individuals 125:10 230:6 industries 11:10 industry 27:6 28:5 106:3,10,11,13 115:9 115:11 143:7 192:3 214:3 inform 109:11 206:21 information 143:19 145:1 157:6 158:24 159:13 207:21 208:2 208:18 210:11,16,25 213:3 informing 66:23 initial 31:5 166:13 234:22 235:1 initially 36:10 140:13 190:19 initials 75:1 initiated 126:17 137:19 inner 171:24 innovation 229:12,12 229:16 innovative 229:10 inside 193:1 install 76:17 installation 76:15 instance 90:4 97:1 185:18 instances 23:22 instead 174:12 188:20 institution 78:9 institutions 18:5 instructed 220:14 instructing 94:11 instructions 93:6 intend 57:23,24 109:3 intended 121:5 intensity 105:11 intention 156:16</p>	<p>intentions 210:22 222:23 interchangeable 20:8 interchangeably 152:18,22 intercompany 55:6 interest 109:5 122:24 interested 19:21 123:24 164:21 168:9 171:4 182:1 190:22 203:12 203:13 248:17 internal 101:3 103:4 internally 193:3 internationally 78:21 interrupt 75:4 interrupted 171:17 interview 9:3 interviewed 9:4 intimate 186:24 intimately 11:23 12:6 18:17 22:23 145:16 invade 115:14 invalid 123:14 139:12 invented 137:1 156:18 inventor 134:2,5,6 inventories 9:9 inventors 156:21 inventory 9:5 101:1,2 invest 152:2 investigation 116:10 investment 23:5,8 232:11 investor 16:13 invitation 118:6 invoice 76:5,12 99:16 101:12,13,14,20 102:22 103:1,14 234:22 invoiced 102:2 invoices 133:9 invoicing 101:10,11 involved 22:24 55:8 137:24 138:20 139:5 145:11,16 164:6 183:19 187:2 196:17 involvement 232:1 involves 162:21 in-line 149:5,6,21 151:8 151:9 152:10,13 164:18 177:20 184:21 191:13,25 192:2 194:6,15,17 201:6 244:25 in-store 11:12 78:1 issuance 109:11 issue 23:25 56:19 73:7 124:20 140:22 178:7 204:10,13 225:7 issued 5:14 issues 19:23 53:7 69:24 79:21 80:16,19 81:1 81:21 146:10 190:5 210:6 215:4,13,16,19 220:23 221:2 232:23 233:9 Italian 59:16 77:11 item 35:13,14 57:22,23</p>
--	--	--	---	---

57:25 58:12 59:15 63:15 119:20 120:13 156:7 232:19 items 65:25 68:21 77:1 215:7,11 216:25 229:24 233:1 it'd 191:14	228:15 229:3 243:1 keeping 27:17 57:6,7 64:15 210:24 keeps 92:16 Kenny 147:25 148:13 148:14 kept 30:5,13 216:1 232:7,7 key 35:12 39:10 kick 140:19 kill 7:8 8:23 26:18 kind 9:19 25:4 31:23 36:7,9 41:13 54:12 57:4 68:23 72:9 79:25 80:7 103:7 106:20 117:1 124:20 125:6 130:3 133:13 133:14 134:19 136:6 140:19 144:4,19 151:15,22,23 155:19 173:12 179:9 191:3 191:24 213:25 215:21 220:8 223:1,2 227:5 231:23 232:10 236:12 238:1 240:3 242:18 kinds 19:23 44:11 kinks 80:16 kitchen 78:2,4,5,5 knew 25:25 26:1 66:3 123:19 127:20,24 133:15 136:20 138:7 145:11,12 148:18 149:12 192:4 203:15 207:7 228:25 232:14 232:14 235:4 238:6 238:16,17,17,20 knife 183:9 186:8 knock 184:8 knowing 114:22 138:22 knowledge 113:25 196:7 205:14 206:2 212:11 236:23 248:9 known 8:6,7 17:21 27:12 89:11 90:22 91:7 165:10,11 170:6 kroll 2:8 4:2,3,4 17:6 18:13 21:25 29:3 32:18,22 33:2 40:19 46:15 53:22 56:10 82:2,13 83:17 84:19 87:2 88:21 89:1 92:6 92:12 105:22 109:24 111:6 112:18 113:1,5 115:19 119:19 120:25 121:6,7,8 129:13 130:1 148:24 163:13 177:14 193:25 196:19 201:3 204:6,11,16 208:14,16 209:12 219:25 227:17 228:18 229:20 230:2 231:11 233:6 237:4 239:13 239:23 244:19,23 246:9	248:3 labeling 62:4,9 labor 171:2 lack 35:5 lading 96:19,24 98:9,22 99:20 100:2,5,19 101:15 103:9 laid 230:9 Lance 3:6 larger 126:2 234:24 largest 57:21,22 last 42:1 83:24 97:9 99:3 101:6 105:13 128:10 153:10 176:20 186:17 199:17 222:8 late 21:13 26:9 107:4 144:20 later 15:18,19 46:14 63:5,5 115:1 122:18 128:25 137:11 146:11 149:11 161:21 168:22 171:5 190:5 law 114:22 lawsuit 18:15 122:8,12 132:25 lawyer 28:17 115:15,16 115:17 117:4 146:18 lay 22:21 132:21 Lea 15:20,22 16:19,19 learned 210:11 232:4 least 17:3 110:17 112:1 164:4 205:13 229:22 230:20 243:23 leave 9:25 181:14 led 31:20,23 Lee 6:17 8:1,7,9,10 10:24,25 12:9,10 17:5 17:6 left 7:15 10:22 12:9 45:2 71:6 84:8 104:12 107:18 148:14 left-hand 172:24 legal 143:10 150:5 legwork 65:4 length 199:7 less 25:12 36:24 57:16 57:17 154:1 192:10 192:13,20 202:24 203:11 219:24 231:4 231:7 let 7:3 8:4 9:2 50:17 56:13 83:13 84:15 90:16 107:10 109:8 110:12 111:22 115:21 117:23 121:1,7 126:9 159:3,8 171:10 173:16 177:14 206:11 215:18 217:18 225:22 226:1 238:18 letter 4:17,19 42:18 66:12 74:14 79:12,20 108:19,21,23,24 109:10 113:14,18,19 114:16,17 115:18 116:6 118:1,23 119:12,13 122:13 124:4 126:13 127:2,4	127:5 129:6 130:7 134:14,20 178:14 212:15 214:20 217:13 226:12 227:5 letters 140:4 let's 32:6 37:20 43:21 43:23 54:15 62:15 64:9 69:16 70:5 74:12 76:2 82:20 88:13 90:11 92:22 95:13 97:1 99:22 105:25 119:16 127:21 141:16 147:7,11 151:2 153:20 167:6,6 167:21,25 169:4 177:6 180:24 181:10 182:7,16,16,17 184:10 187:4 192:6 193:8 209:8 214:8 216:24 220:3 222:14 223:16 236:14 level 36:21 95:4 125:12 125:15 211:22 212:1 228:22 levels 37:9 LI 93:16 license 114:6 119:2 licensing 114:14 lid 20:19 life 36:1,16 106:4 147:17 like 9:4,24 20:17 27:13 27:18 29:13 41:3 42:6 49:19 52:11 61:2,20 62:13 66:6 77:11,11 78:22 79:5,6 79:25 80:7,9 106:16 114:6 115:5,8 124:1 126:2 127:25 130:3 131:1,4 132:8 134:11 134:12,13 136:17 138:12 140:5,15 141:25 143:9 146:8 147:5 173:6,7,9 175:18,21 176:1 178:9 179:24 181:7 194:2 202:2 207:19 210:5 218:3 219:7 222:9 227:12 238:9 238:22 liked 218:7 likely 231:7 Lincoln 97:23 101:19 103:17 line 7:9 8:23 39:2 64:23 65:16 lines 38:24 39:8 link 98:6 liquid 24:3 37:13 43:18 64:6 66:17,22 67:4 75:8 110:20 111:25 142:19 168:14,17,24 169:15 180:11 181:24 182:3 185:1,4,10,12 185:16 194:23 195:1 195:6,12,17,20 196:4 196:10,20,24 197:4	201:19 207:15 225:4 228:1,5,6 243:12,18 Lisa 42:10 51:23 54:24 64:14 147:20,23 149:22 150:15 153:7 163:20 242:23 list 65:24 98:9 215:11 listed 91:1 215:7 lists 200:18 litigated 140:1 litigating 123:8 139:22 litigation 24:1 124:11 124:16 139:5 141:4 218:14,15 little 8:4 15:18 17:1 63:13 70:25 73:19 81:3 83:3 84:10 115:7 128:10 132:7 132:12,21 138:6 147:4 159:7 160:11 164:2 179:5,5,6 201:20 205:1 225:9 236:12,15 littler 136:19 live 13:24 170:11 186:19 livelihood 135:23 lives 36:4 loaded 101:18 loading 154:10 loads 220:9 222:19 local 173:10 locally 172:7 176:19 located 125:25 148:24 location 15:3 83:9,10 Log 103:3 logical 165:25 166:14 long 13:6,7 72:10 104:13 116:15 128:4 128:6 129:16 143:14 longer 24:18 73:10 221:14 222:4 look 19:16 20:3 30:3 42:7 50:9 54:15 61:4 64:9 68:4 71:2 79:11 107:17 118:7,12 138:10,18 143:1 150:16 152:13 175:18 175:21 185:3 186:5 188:23 198:19 211:5 212:7 looked 26:21 28:11 52:16 62:21 63:3 143:9 149:10 179:25 looking 19:9 27:23 31:12,15 137:4 142:6 151:7 152:10 166:7 168:20 175:21 186:1 207:5 looks 66:6 105:9 loose 157:13 lose 56:1 loss 38:12 72:4 lost 38:9 lot 18:7 27:1 28:13 37:22 63:21 133:21 133:22 208:20 223:11
J January 70:10 71:5 108:1 118:1,13 200:4 Jefferson 1:19 14:18,22 14:24 15:3 76:17 83:10 86:25 104:17 104:22 180:9 248:5 jelly 175:21 jennie-o 1:6 18:12 122:9 123:5 139:4,22 140:22 143:24,25 Jerry 178:19,22,24 179:7,17 Jewell 78:25 Jim 104:6,11,13 198:22 223:19 job 8:16 9:11 11:25 53:2 116:11 143:4 J e 53:16 104:12 145:4 145:9 join 132:24 judge 29:24 84:2 juice 190:9 216:3,8 223:14 July 118:22 119:12 jump 127:15 229:2 juncture 94:1 June 32:19 34:3,6 162:6,25 163:15 jury 34:13 49:11 64:12 79:19 84:2 88:9 108:23 just 12:15,25 14:8 19:12 20:13 24:25 28:12 30:22 37:10,11 39:4 46:14 49:19 52:3,13 54:3 60:12 62:18 69:4 72:13,25 82:6,15,24 89:2 92:15 98:6 99:1,11 117:1 119:25 120:19 127:24 127:25 134:11,12,12 139:25 141:12 143:18 144:2 145:15 160:9 167:14,20 170:9,25 171:10 174:10,18 179:9,9 181:14,18 205:20 206:8 212:18 214:4 215:18 218:22 219:1,11 223:5 226:1 227:20 230:12 231:19 234:16 238:5 244:11 justice 114:25	K keep 62:7 67:7 74:25 75:2 132:12 144:18 204:23 208:2,18 213:2,20 220:15	L L 1:21 3:2,5 246:5		

<p>233:20 238:21 Louis 126:1 low 219:23 231:13,19 242:21 lower 36:12,19 73:10 125:15 160:6 197:21 197:24 198:23 199:4 199:20 201:14 241:20 242:2 ludicrous 114:20</p> <hr/> <p style="text-align: center;">M</p> <p>machine 70:17 173:21 machinery 188:16 machines 91:22 made 3:13 13:10 18:24 19:2 32:18 54:22 64:18 98:6 124:21 166:12 177:2 180:4 215:9 222:16 238:16 Maillose 20:12 21:3,4 44:18 48:12 59:13 60:12,20 83:6 196:11 207:19 Mailloses 44:23 Main 14:19 15:7,23 maintained 35:16 maintenance-type 53:1 major 63:20 66:6 167:18 majority 107:25 108:8 134:13 217:23 218:21 make 15:13 17:19 30:4 50:17 68:2 69:13 93:2 115:4 130:22 133:23 136:23 177:7 179:14 180:1 201:18 210:7 211:21 212:13 219:8,9 234:17 236:3 237:23 238:8 239:6 243:4 makes 105:11 making 23:7 33:21 68:25 82:16 132:6 161:16,21 229:17 237:20 maliciously 223:4 management 9:5,6 46:20 55:8 manager 7:23 8:2 10:23 11:3 13:19,22 14:6 16:9 17:4,15 53:18,20 147:25 managing 9:9 manner 19:10 135:15 225:5 manually 154:11 manufacture 191:6 manufactured 92:4 209:16 manufacturing 13:24 14:2 22:4 33:22 43:13 104:14 198:7 245:13 many 25:9 56:12 69:23 91:10 98:21 152:21 maple 59:24 77:10</p>	<p>March 108:2 182:14 200:16 mark 5:17,21 28:16,20 47:21 50:7 53:23 97:8 118:9 marked 29:5,6 52:20 163:21 market 10:15 78:17,23 78:24 80:1 148:21 marketed 11:20 marketing 7:16,17,19 10:11 11:2 13:25 64:16 147:24 148:1 marketplace 207:6 married 151:24 masking 196:25 mass 78:8 material 9:4 63:20 236:25 math 95:21 matter 116:3 134:19 139:14 143:22 147:16 201:23 231:17 matters 248:9 maximum 72:19,21 222:10 may 3:4,13,17 6:20 19:18 27:16 36:15 47:21,22 62:9 67:19 77:14 80:15 93:22 97:24 98:4 101:23 104:6,19 117:17 137:1 142:17 145:22 145:23 148:10 149:15 152:21 156:18 161:11 161:12 164:3,3 165:17 192:1 193:2 195:16 198:12 199:6 201:7 202:11 209:7 222:21 227:8 245:8 245:14,20 246:1 maybe 37:8,18 58:15 58:17 62:25 78:18 126:20 131:12,14 134:16 143:6,7 144:20 146:11 149:13 172:15 194:1 200:1 236:18,19 242:20 mean 20:16 21:7 22:23 27:10,12 35:17,20 37:14 38:8 39:14 44:25 49:8 51:12,25 55:15 57:16 58:22 60:11 62:5 63:20 65:10 67:24 71:11 75:4,7 78:3 83:6 88:25 95:15 110:9 114:1,21 119:4 128:6 129:1,3,18 132:17 135:15,18 139:24 140:23 142:17,24 143:1,9 145:6 152:15 152:21 155:20,25 161:12 163:5 165:16 166:2,19 167:3 173:5 175:6 183:25 184:7 185:9 187:1 195:13</p>	<p>195:16 196:16 213:13 213:16,20 228:22,24 231:14 233:17 234:23 236:6,25 238:7 245:24 meaning 221:18 means 37:5 38:20 39:17 54:14 58:23 82:4 119:4 127:10 128:8 185:10 196:9 meant 36:17 58:21 106:19 135:24 177:11 177:23,24 187:23 202:23 219:2,3 meat 7:4 14:3 16:23 24:2,4 41:21 46:5,7 59:20 60:1 85:15 98:23 109:14 110:16 110:19,23 111:3,24 112:3,9,14 196:22 207:2,14 242:9,15 meats 8:1 meet 18:3,18 107:7 111:12 211:4 meeting 33:12 121:17 147:18 210:20 meetings 165:2 180:8 members 164:25 memo 46:20 55:6 62:24 82:20 104:6 147:16 150:24 153:15 163:20 223:19 Memorandum 67:12 mention 207:2 mentioned 18:10 20:7 117:22 118:17 merry 122:22 mesquite 45:22 48:15 58:4,10 66:8 77:16,18 90:1,2,3 94:16 95:24 108:10,12 met 18:20 22:9 23:11 26:8,13 68:17 116:8 144:14 179:25 method 38:17 109:13 110:14 michael 1:16 5:1,9 247:7 248:7 Michigan 6:3,4,6 126:7 mid 106:9,12 107:8 middle 199:23 Middleville 6:4 mid-1996 131:18 might 19:19 99:6 126:21 146:10 147:3 165:23 177:24 186:22 194:3,4 202:22 222:25 Mike 5:7 23:6 51:9 mile 15:8 million 10:20 14:12 55:19,20 63:18 65:11 202:2 211:12 218:1 236:7 mind 54:23 145:6 161:3 173:17 206:24 214:1 219:6</p>	<p>mine 30:24 54:8 70:5 186:5 mine's 69:17 112:5 minimum 192:21 Minnesota 1:7 15:22 16:20 minor 37:11,11 minute 22:16 154:14 minutes 37:20,21 121:15 150:13 mischaracterizing 200:23 missouri 1:20,23 5:12 247:9,14 248:1,4,19 248:25 mistake 238:8,16 misunderstanding 112:22 misunderstood 200:1 mixture 197:6 model 151:16 modifications 222:15 moisture 38:9,11 157:13 224:1,9 Monday 84:7 86:14 money 26:15 27:1 63:21 67:7 81:5 93:19 101:22,23 116:22 132:16 133:21 171:19 218:12 220:21 220:25 221:6 236:2 month 105:13 months 144:21 moot 139:14 more 10:7 18:7 36:2 37:2 44:7,10 55:22 62:18 67:5 68:22 72:24,25 73:11 80:3 81:3 117:18 128:16 138:25 143:18 145:18 147:4 160:6,14 164:2 201:17,25 202:2 203:25 205:11 207:24 213:9 217:20 225:5 233:20 morning 87:22 most 57:24 105:17 106:3 170:8 179:16 179:21 motivated 136:23 move 60:19 61:15 133:4 193:1 198:10 223:15 224:20 232:13 moved 197:23 moves 85:25 moving 57:7,8 161:9 MPI 67:22,24 much 12:2,4 15:12 27:5 36:12 54:22 56:23 63:13 65:4 87:15 95:11 105:12 117:14 126:2 131:13,20 160:2,4 172:4 180:14 189:2,25 193:2 197:21 216:2 218:12 219:1,2,3 220:21 234:17 236:2 242:5</p>	<p>Muller 43:9 46:21 125:17,21 145:3 149:24 191:7 multi-hundred 23:4 muscle 24:2 27:7 41:21 46:1,2,5,7,9 58:7,11 59:20 60:1,8 77:19 85:14 94:23 95:2,3 98:13,22 102:3 108:15 109:14 110:16 110:19,23 111:3,24 112:2,9,13 196:22 207:14 242:8,15 must 157:25 myself 114:21 131:1 205:16 221:24</p> <hr/> <p style="text-align: center;">N</p> <p>N 1:19 2:6 3:2 4:1 248:5 name 5:5,8 13:15 45:16 60:13 121:8 125:19 186:17 195:14 named 14:20 17:17 names 125:7,16 national 7:22 8:2 10:23 11:2 60:5 natural 60:6,7 207:9,12 nature 79:8 137:11 181:13 NE 103:11 153:25 Nebraska 101:19 necessary 217:24 224:20 need 10:7 36:6,6 47:11 66:25 82:6 89:21 101:23 114:3,3 125:3 128:22,23 131:2 133:19,21,22 135:22 142:5 146:24 147:3 150:16 151:19,20 170:9 171:3 173:19 178:4 198:22 204:20 206:6 222:15 232:17 233:18,18 239:3 needed 41:16 64:21 79:22 146:19 160:5 160:11 191:1 218:22 220:8 234:18 235:5 needs 101:9 negative 165:13 225:22 neighborhood 220:24 never 119:13,15 133:1 133:1,23 134:4 135:13 142:16 178:10 214:7 217:7,8 219:9 233:14,17 new 20:5 155:21 229:9 next 36:22 39:7 42:6,17 54:2,18 62:16 63:22 64:9 65:23 66:10 68:19 76:2 79:15 86:17 87:11 88:7 92:22 96:3,13,14 99:14 102:19 103:2 104:3 117:23 150:1 154:10,22 155:8</p>
--	--	--	--	---

156:7 157:9,22 187:25 nice 160:8 227:14 night 6:14,22 Ninety-nine 15:15 nine-pound 188:14 Nixa 5:12 nobody 28:8,9 222:25 none 39:16 40:12 87:17 non-home 78:11 normal 209:21 notarial 247:8 248:1,18 Notary 1:22 3:17,18 247:13 248:3,24 note 74:2 104:16 noted 73:22 90:25 notes 54:7 70:10,14 200:3 226:2 nothing 147:6 170:11 170:16 236:25 nothing's 140:17 notice 4:7,9 5:19 45:2 50:9 57:20 58:14 67:15 71:5,23 75:3,4 75:11 83:23 91:9 120:9 noticed 120:14 notices 5:22 n vel 170:16 no-brainer 52:4 number 7:19 19:20 34:14 42:11 43:25 44:4 45:5 50:25 54:1 54:5,16 57:25 58:12 59:15 64:10 70:5 71:3,4,24 74:12 75:13 76:5 77:15 90:23 93:15 98:8 105:4 111:16 117:23 118:5 147:13 150:3 151:10 152:25 153:11 158:22 159:12 161:2,25 162:17,19 163:15,22 166:5 169:5,8,10,19 170:21 171:14 172:1 172:20 174:20 175:15 176:15 178:12 180:5 182:7,20 184:4 193:20 194:12 197:15 201:25 213:22 214:9 214:13 220:1,3 222:14 223:17 224:17 229:21 230:14 numbers 9:21 45:3,14 46:12,13 63:15 72:23 74:5 85:25 89:3 108:2 162:10 numeral 75:13 104:17 182:18 numerous 117:12 <hr/> O <hr/> O 3:2 object 129:21 163:2 177:9 193:23 219:21 239:8 objecting 92:16	objection 4:9 5:22 21:25 40:19 56:10 82:2,13 83:17 84:19 87:2 92:6,12 105:22 109:24 111:6 112:18 113:1 115:19 228:18 230:2 231:11 objecti nable 36:14 objections 3:13 82:16 129:10 objectives 18:3 observation 82:25 observe 25:22 Observing 224:1 obtain 155:5 obtained 154:20 156:4 156:23 157:20 158:10 158:18,24 170:5 182:5 183:3,14 184:24 186:13 187:11 193:6,16,21 194:24 195:7,21 196:4 210:25 213:4 225:17 obvious 174:4 obviously 55:23 150:22 occasionally 237:1 occasions 25:9 117:12 occur 224:10 occurred 80:17 107:8 134:11 161:7 163:19 202:11 October 1:17 53:9 168:8 off 20:19,19 47:22 56:21 74:10 76:23 91:16,19 103:15,24 104:1 106:20 119:17 127:15 147:7,9 151:2 151:3 157:13 160:3 183:10 186:10 196:15 209:10 218:5 219:13 228:9 236:16 238:18 offer 141:25 office 247:8 248:18 official 215:6 oh 8:11 28:1 35:5,11 42:13 60:21 82:11 113:7,18,20 134:20 135:2 153:22 161:8 172:23 173:2 186:6 200:5 oil 58:24 59:9 60:7,9,16 60:17 61:23 62:3 OK 2:7 oklahoma 1:3,25 2:7 old 62:12 137:24 243:22 oleoresin 61:6 once 66:3 89:5 100:5 125:13 one 12:5,15,17 15:5,6 23:17 27:3 31:4,11 42:17 45:19 46:2 47:6 48:10 49:3 50:13 52:14 54:6 62:11,21,24 63:1,4,18 66:6 71:23,25 75:13	75:13 77:15 88:6 104:17 105:3,4 106:17 111:17 115:6 115:9 117:17,19,25 122:13,14,15 124:3 126:12,17 128:17 134:21,24 138:7,9 139:11 143:14,17 149:21 152:20,20 153:23 154:10 163:12 164:22 172:1 175:22 175:23 176:2,4 179:10 180:22 182:17 183:19,23 184:2,5,10 185:7,19 199:17,19 199:23,24 206:25,25 207:3 209:6 211:3 213:23 217:3 219:17 223:2 224:23 226:3 226:16 230:9 236:18 245:7 ones 41:12 60:25 only 51:14 56:22 67:19 88:5 125:4,21 132:19 141:5,14 164:22 193:20 197:25 236:9 237:18 onto 112:1 154:12 182:4 on-site 73:22 open 147:2 opening 178:19 operating 74:8 82:1,10 operation 17:4 234:10 operations 13:24 operator 70:23 operators 198:7 opinion 114:15 opportunity 51:20 113:21 134:15 148:20 opposed 16:6 25:3 36:11 58:25 179:18 181:9,11 200:6 203:4 option 19:13 options 27:25 224:20 oral 208:16 order 4:15 22:17 25:20 29:16,22 30:17 43:24 43:25 45:10 50:21 53:9,13,14 64:21 89:8 90:16 93:1,3,7,9,15 94:7,12,12,13,14 96:8 96:15 99:12 162:3 209:14 211:6 218:13 239:21 ordered 50:19 93:12 94:3 95:5,14,19,23 ordinary 80:20 organization 208:6 organized 30:12 original 16:17 88:23 171:22 originally 188:3 234:25 other 3:18 15:6,13,16 15:16 21:10 25:7 26:22 28:10 40:11 42:4 55:21 56:6,7,15	60:25 62:6,21,25 65:13 80:21 81:2 83:1 95:4 98:15 99:8 102:14,20,21 115:7 120:18 123:21 124:9 125:18 127:3,19 130:16 134:16,18 137:12 140:3 141:1,2 141:5,14,21,21 143:10 144:13 146:5 151:25 160:14,25 163:12 166:4 174:3 176:11 197:18 199:18 207:25 209:6,16 212:5 213:9 218:16 226:3 229:23 234:20 241:14 244:8,18 245:7 246:2,6 others 78:23 99:11 121:3 143:14 otherwise 174:15 248:17 ought 19:16 70:4 ourselves 169:1 out 7:8,8 12:1,20 13:3 18:2 26:10 27:21,23 28:8,9 31:7 39:20,25 40:5 55:20 61:19,20 62:1 63:4,5 68:2 72:2 73:1 80:20 96:16 101:1 103:10,11 105:12 110:10 117:24 118:18 127:10 136:16 138:7 143:18 144:12 145:2 149:9 155:10 156:1 159:18 162:3 170:7 171:2 173:12 174:3 184:8 185:10 192:16,22 196:16 198:19 201:18 202:25 207:5,8 211:16 213:10 216:8 219:8 220:10 224:6 228:8 228:23,25 230:10 233:1,10,19 235:5 236:11 237:9 248:12 outstanding 215:4 out-of-pocket 76:15 ovens 35:7 39:19,24 40:7 80:3 128:16 135:10 191:18 223:2 oven's 220:4 over 10:20 14:19 15:5 15:23 16:7 20:5 30:3 32:6 49:16 56:15,25 57:1 60:19 61:16 62:17 65:6 71:2 72:8 72:16,16,17 77:4 84:7 84:21,24 85:2,21,25 91:1 104:15 121:17 130:10 140:18 171:23 180:14,19 191:23 214:4 220:15,16 244:14 overall 171:15 overly 127:12,13 Overstreet 104:6,8,10	104:11,13 223:20 over-production 107:7 owe 101:22 own 7:21 46:12 57:5 103:15 132:17 154:5 154:17 155:2,18 156:14 158:6 183:6 183:17 213:24 owned 17:15 230:5 owns 178:8 <hr/> P <hr/> P 3:2 246:5 pack 88:10 90:7 91:16 91:18,20 157:12 158:13 219:16 package 224:1 packaged 92:11 94:4 193:10 packed 89:9 90:4,11 97:15 packing 91:17 page 32:11 33:25 34:4 34:11 42:1 43:14,15 43:15 47:8 50:11,25 53:17 57:21 58:14,17 58:18 64:23 69:15 72:16 74:22,24,25 75:5 83:24 87:11 90:12 99:3 102:18,19 111:17,20 150:1,1,3 152:24 153:10 162:5 199:17 224:17 229:22 pages 48:10 69:19 72:17 151:15 page/line 4:1 paid 69:22 101:9 133:17 144:7 235:12 panel 240:4 paragraph 68:12 109:8 180:7 214:25 parameter 203:7 parameters 36:20 175:4 190:11,13,15 198:4 231:1 Pardon 113:17 parent 116:3 parentheses 155:8,11 155:12 185:21,25 parentheticals 36:25 37:3 Parker 2:9 part 41:19 53:6 68:4,7 68:12 79:1 108:2 126:1 143:4 159:10 160:25 161:23 164:22 169:13,18 170:1,20 171:15 176:21 177:12 177:16 178:1 187:13 193:21 194:22 206:5 207:10 208:8 210:19 222:12 particular 7:23,24 31:11 45:1 56:20 59:1 60:14,16 68:9 86:3 90:5 91:21,22 93:24 103:14 107:23
---	---	--	--	--

<p>125:12,16 135:21 137:17 143:22 155:19 159:23 183:20 188:19 189:14 204:1 210:2 229:18 parties 3:4,9,12,16 18:16 29:16,23 55:7 101:4 113:13 208:12 parts 70:18 party 248:15,16,16 Pasadena 2:11 pass 237:3 244:21 passing 134:20 past 215:3 pasteurization 124:7 138:4,6 235:18 pastrami 94:19 99:10 patent 109:2,4,6,12,15 109:17,18,20,23 110:1,4 114:17,22 115:5 117:10 119:2 123:4,14 124:5,11,16 135:21 139:11,12 141:4 142:8,17 143:8 143:12,12 144:8,9 150:15 204:8,14 227:23 patentability 150:17 patenting 110:6,9 150:6 patents 143:5 path 52:14 PATRICIA 1:21 3:5 248:3 pay 221:3,9,9 pending 1:24 people 19:11 22:3,4,5 22:12 23:10 25:25 26:14,21 30:15 34:15 41:13 43:12 50:3 52:2 57:16 62:13 66:13 76:16 77:6 81:14 91:17 125:7,16 127:3,19,22 134:13 136:16 145:1,11 171:23 175:19,24 178:21 183:18 184:5 184:6 198:7 211:23 212:5 213:23 232:14 people's 52:3 pepper 77:12 per 96:1,17 107:1 154:13 217:4 percent 15:15 38:6,6 102:11 212:9 218:4 238:12 242:20,21,24 242:25 percentage 78:21 percentage-wise 15:12 perfect 30:17 69:6 perfectly 128:18 205:23 perform 217:9,11 performance 234:1 performed 169:14,20 217:7 performing 38:9 215:8</p>	<p>perhaps 120:16 163:1 period 13:12 20:16 25:16 131:16 202:6 permanent 9:11 permission 141:8 person 9:20 42:10 52:25 136:22,22 148:3,4 166:14 172:17 178:23 179:8 211:5 213:23 personality 179:12 personally 18:20 208:5 ph 4:21 pharmaceutical 148:22 Phil 19:19 69:21 73:1 82:22 104:7 125:20 125:20 145:3 146:16 149:18,18,22,23 160:15 166:25 176:10 176:16 177:7 183:21 186:16 198:20 223:19 phone 113:23 117:15 126:18 134:1 226:5 235:15 phonetic 4:21 physical 56:23 101:1 picked 113:23 121:16 picture 242:10 piece 19:15 42:4 80:25 81:2 122:25 128:20 128:20 155:19 158:15 167:8 170:13,23 171:6 173:20 180:16 188:16 189:18 190:3 208:23 pieces 141:9 172:14 183:20 188:12 217:4 223:6 237:18 pitch 152:5 place 49:10 70:22 144:17 163:15 placed 180:22 plaintiffs 1:8,17 2:3 4:6 4:8,10,12,14,16,18 5:21 28:21 50:8 52:20 53:25 119:23 Plaintiff's 5:18 plans 18:1,2 plant 10:3 19:23 21:24 38:22 43:4 53:18,19 56:20 61:22 84:5 104:17,18,22 115:10 167:19 180:9 224:24 plants 104:15 please 5:6 6:9 109:7 215:1 pleased 81:15 plus 11:9 16:18 38:20 40:16 65:12 155:10 189:3 point 7:21 9:3 29:19 51:5,23 53:18 54:21 62:22 69:1,7,9 73:1 73:18 79:24 88:6 104:12 127:7 128:14 128:15 130:20,21 132:6 133:12 135:6</p>	<p>140:14 144:24,25 145:13 146:16,22 147:1 149:14 159:1 166:20 171:18 174:3 196:13 198:5 201:21 202:5 205:16 213:8 216:21 217:21 219:12 220:16 221:10 225:1 232:8 236:3 pointed 228:8 points 27:3 217:22 political 135:7 Ponca 49:5,6,7,16 65:6 65:23 138:11 174:16 191:1 pony 52:2 pork 11:6 portion 110:17 112:1 position 9:6 possible 163:9 207:13 possibly 65:14 post-pasteurization 122:25 potential 55:10 62:19 135:12 pound 96:1 poundage 55:25 88:4 pounds 84:6 85:9 87:6 87:7,8 88:15 90:15,16 90:18 95:15,22,23 99:2 188:21,24 202:2 223:7,8 power 140:11 190:10 233:20 practice 210:4 preceding 91:6 precooked 24:2 41:21 58:6 59:20 60:1 75:8 85:13,14 94:22 98:12 98:22 102:3 108:14 109:14 110:16,18 111:2,23 112:2,13 196:22 207:13 242:8 242:14 predates 62:20 preheating 224:19 225:2,14,23 preparation 121:11,13 193:11 prepare 111:12 prepared 11:21 119:1 147:20 189:16,21 199:10 201:5 Present 105:5 presented 32:9 52:3 presentation 3:9 preserve 82:16 president 7:16 9:18 16:16 17:12,17,20 51:10 president's 60:5 prestige 58:9 pretty 10:5 27:5 36:5 51:14 54:22 124:25 138:5 147:1 161:8 163:17 186:24 188:15 207:4 218:18</p>	<p>prevented 68:13 prevention 68:10 previously 103:21 217:5 pre-coated 83:5 pre-drying/warming 105:5 price 51:3 101:9 primarily 11:5,7,12 166:22 240:9,14 primary 244:4 principal 13:21 15:9 77:23 printed 63:5 prior 121:23 122:3 131:12 180:12 184:19 242:9 245:7,14,20 246:1 prioritizing 66:2 privilege 115:14 probably 7:7 19:1 48:14 56:17 62:20 73:3 84:23 111:19 115:2 117:24 145:8 150:12,13 166:15,16 192:4 196:15 202:8 204:25 221:16 222:12 231:8 232:5 problem 35:18 81:19 81:20 141:13 160:1 201:15 221:21 224:12 238:6 problems 80:19 165:12 215:13 237:16 procedure 44:17 66:19 66:21 74:17,18,23 75:15,17 Procedures 75:6 processed 11:21 12:15 15:23 27:8 86:24 91:12 94:4 98:24 99:4 processes 47:15 80:22 processing 7:4 12:11 14:2,3 15:21 16:3,4 16:25 20:9 21:23 76:21 78:6 produce 119:25 133:9 133:10 produced 14:16 28:17 29:15 30:20 31:1 87:15,24 88:13 98:16 107:11,19 116:20,21 119:5 144:6 208:9 233:2,11 236:23 239:19 246:1 producing 60:24 83:11 83:14 110:14 production 43:7 65:3 66:5 83:5,7,25 84:4 85:11 86:4,5,6,14,20 92:1 130:17 191:3 201:18 215:22 products 10:13 11:1 12:11,12,13 14:13,16 15:14,16 20:4 24:2 27:7,7 40:10 41:22</p>	<p>44:15 45:6,11 47:12 58:20,23 59:11 62:7 65:20,25 66:7 67:19 76:20,20 77:20 78:17 78:20 84:9,12 88:12 89:21 90:9 93:7 94:22 98:15,21,23 102:23 105:11,14 107:15 109:14 111:13 111:24 121:10 150:7 166:23 175:20 176:4 201:5 207:5 209:16 223:24 226:24 228:1 228:3,4,7 242:9,15 243:9 product's 189:25 professional 135:15 profit 222:11 profitability 106:15 profits 222:8,13 program 10:12 241:5 245:22 programmed 240:15 project 64:15 81:10 106:18 148:5 149:8 149:24 151:11 152:6 174:17 234:21 projects 70:1 proof 91:25 133:7 proper 189:4 proposed 131:21 132:1 protect 109:3 122:16 protective 29:15,22 239:21 Protein 43:11 125:23 125:24 protocol 66:18 protocols 66:24 proven 39:8,14,16,17 39:18,18 40:14 provided 49:24 190:13 190:19 207:21 Public 1:22 3:18 247:13 248:3,24 purchase 22:17 25:20 51:7 63:24 64:18 92:25 93:3,7,9,15 94:7 168:3,7 169:7 209:14,15 211:6 purchased 76:22 87:16 110:2 111:4 118:14 171:6 197:9 215:5 224:14 225:12 purchasing 164:12,16 168:9,21 182:1 219:4 pure 131:5 purge 154:23 182:22 183:10 223:25 232:22 purging 224:10 purportedly 119:1 purpose 159:17 160:21 160:24 164:12,16 168:17 171:12 200:11 purposefully 133:2,3 purposely 132:12 purposes 20:8 28:23 pursuant 5:13 18:9</p>
--	--	---	--	---

<p>28:19 29:15 239:20 248:4</p> <p>pursuing 150:7</p> <p>push 146:19</p> <p>pushed 106:18</p> <p>pushing 167:5</p> <p>put 7:16 8:21 9:12 10:12 13:3 16:12 33:14 34:5,16 49:15 51:23 52:1 57:2 62:8 66:19 70:22 90:20 99:23 100:19,21 116:17 137:8 141:9 148:4 151:11,20 152:7 153:25 165:18 185:5 187:25 202:1 211:9 216:5 218:11 219:14 223:1 225:9 233:19 234:8 238:25 242:6</p> <p>putting 12:21 20:14 23:20 59:8 66:18 70:20 115:4 157:3,5 188:13,20,23 203:19 222:20 232:16</p> <p>pyramid 33:21 40:2 50:21 156:20</p> <p>pyr lysis 24:3 110:20 111:25 142:15,21 181:5,6 194:23,24 195:6,7,20,21 196:4,5 196:8,9,20,25 197:5 227:24 228:1,5,11</p> <p>p.m 1:18,18</p> <p>P.O 22:10 53:7 101:4,5 144:15 179:25 208:21 210:21 238:9</p> <hr/> <p>Q</p> <p>quality 22:4 57:13 67:11 95:4 198:10</p> <p>quantifying 185:7</p> <p>quantity 95:5,19</p> <p>quarter 107:22</p> <p>question 22:1 82:6,7 129:11,21 134:23 162:23 163:3 171:10 177:10 178:20 193:24 201:4 205:13,20,21 206:6,11,23 219:22 226:3 233:4 236:18 239:1,4,9,11 244:20 245:7</p> <p>questioning 163:24</p> <p>questions 3:14 54:11 121:8 144:11 199:9 204:21 206:10 227:18 239:14,16 244:18,22 245:3,5 246:6,8,10</p> <p>quick 209:9</p> <p>quickly 161:19</p> <p>quite 143:10 207:24 222:21 227:14 231:7 237:19</p> <p>quote 172:3 173:17 235:1</p> <p>quotes 43:16</p>	<p>R</p> <p>R 22:3 34:15 43:10,10 43:13</p> <p>racetrack 79:3</p> <p>rack 56:24 154:11</p> <p>racks 56:21,23 57:2,3,9 83:5,7,19 85:8</p> <p>radiant 26:22 28:12 31:23,24,25 32:4,14 32:23 33:1,4,6,17,20 33:22 34:18,22 35:15 35:18 36:23 37:6,23 38:5,17 39:15,24 40:12 44:9 147:17 149:2,3,4,9,15 150:21 152:12 153:11,20 154:4,7,12,16,19 155:1,4,17,24 156:4 156:13,20 157:1,16 157:19 158:5,17,20 159:9,11,18,24 160:8 161:13 162:11 163:6 164:7,20 165:1,7 167:16 170:8 174:7 174:12 232:6</p> <p>radical 36:8</p> <p>raises 178:19</p> <p>ran 22:7 83:4 85:7,8,9 85:21 88:14 90:10,19 91:5 102:6 103:1 107:15,16 179:2 202:19</p> <p>range 187:8 197:18 198:17 199:11,15 200:18,24 231:8</p> <p>ranges 199:2</p> <p>ranging 197:11</p> <p>rank 219:19</p> <p>rant 127:16</p> <p>rapid 30:9 40:7 42:21 44:8 55:9,18 75:23 94:21 98:17,24 99:5 102:4 104:23 105:7 107:16,24 108:4 168:10 169:21 187:18 187:25 188:3,9 202:15,20 203:17 206:22 209:15</p> <p>rapidly 232:13</p> <p>Rapids 126:6</p> <p>rare 237:2</p> <p>rather 237:12</p> <p>rave 127:16</p> <p>raw 16:6 31:14 57:1 84:21</p> <p>re 119:2</p> <p>reaction 129:5 181:20 227:10</p> <p>read 38:7 65:18 93:8 105:1 109:8 110:12 111:16,22 114:19 142:17 143:5,11,13 214:25 227:22</p> <p>reading 68:15 110:3</p> <p>reads 34:11 35:15 47:10 83:25 110:5</p> <p>ready 204:5</p>	<p>real 69:1 81:15 105:13</p> <p>realizes 135:8</p> <p>really 9:24 10:15,16 19:21 31:8 32:1 37:25 46:11 51:19 54:21 58:15 59:7 61:9 69:1 106:3,19,21 125:11,22 127:8,8 128:6 130:22,24 131:1 132:22 133:24 134:19 136:6,19 152:23 160:16,17 167:4,5,7,15 172:12 178:22,24 179:1 204:19 205:9 211:16 217:7,13 219:6 233:17 238:6 242:5 243:8,17</p> <p>reason 160:20 189:10 203:8</p> <p>reasons 28:13 106:17 211:4</p> <p>rebate 217:15</p> <p>recall 18:19 36:19 40:3 108:18 119:11 124:18 125:18 126:23 136:4 144:16 146:5 161:7 169:23 199:9 210:17 210:23 211:2 226:9 226:20,25</p> <p>receipt 93:20</p> <p>receive 94:11 109:19 127:4</p> <p>received 55:2,12 98:3 101:4 114:15 121:2 124:3 126:12 127:2,3 129:6 134:14 157:7 159:13 208:3,18 210:16 226:11</p> <p>receiving 99:21 108:19 117:14 119:11</p> <p>recent 109:11</p> <p>recipe 58:3 59:16,23 76:25</p> <p>recirculate 181:11</p> <p>recirculating 155:15</p> <p>recollect 126:16</p> <p>recommendation 176:18,24 177:8</p> <p>record 5:6,20 28:24 29:10,14 50:18 55:5 66:11 74:10,11 82:17 103:24 104:1,2 119:17,18 147:8,9,10 147:11 151:2,3,4 209:10,11 236:16,17</p> <p>recording 3:5 248:11</p> <p>records 4:11 30:19 103:5 116:16,17</p> <p>RECROSS-EXAML... 4:3,4,5 237:4 244:23 245:6</p> <p>red 16:23 175:22 196:16 207:2 228:2,7</p> <p>reddish 105:10 175:13</p> <p>REDIRECT 4:3 227:19</p> <p>reduce 19:24</p>	<p>reduced 3:6 57:10,11</p> <p>refer 89:6,6,13 108:17 199:14</p> <p>reference 150:11</p> <p>references 198:21</p> <p>referred 149:12 153:14</p> <p>referring 86:10,12 90:12 100:14 177:19 200:3 226:10 242:1</p> <p>refers 39:19 153:7 162:7</p> <p>refined 41:14,15</p> <p>reflect 88:2 162:11 174:21</p> <p>reflects 36:24 76:6</p> <p>refrigerated 1:12 5:25 18:14 108:25 118:25 121:9 131:25</p> <p>regarding 117:9 121:25 122:4,8 124:4,10,15 141:4 142:8 145:2 150:5 232:20</p> <p>regular 12:16 30:13 187:20</p> <p>regulations 67:22</p> <p>related 19:24 120:18 228:17</p> <p>relating 46:13</p> <p>relationship 21:17 26:5 80:7 214:15 241:6,12</p> <p>relative 79:22 130:16 137:19 144:11 208:22 248:15</p> <p>relatively 188:12</p> <p>relevance 204:4</p> <p>relieve 100:25</p> <p>rely 237:24 239:6</p> <p>remain 127:14</p> <p>remained 17:14</p> <p>remaining 183:10</p> <p>remember 26:10,19 40:6 73:2,7 82:7 108:20 114:10 118:13 126:18,19,20 130:5 131:13,15,18 132:3 134:5 136:13 142:1 173:16 180:25 189:8 220:22 226:21 227:1 227:2</p> <p>remove 105:17 154:22 182:22 184:18</p> <p>removed 153:24 154:11</p> <p>removing 23:19</p> <p>rephrase 83:13</p> <p>replace 220:13</p> <p>report 64:17 69:21 82:23 84:1 86:14,20</p> <p>reported 147:25 148:2 148:2</p> <p>Reporter 1:22 3:6 248:3</p> <p>represent 53:12 72:23 75:1 76:11 107:13 116:7 121:9 215:19</p> <p>representations 215:9 237:24 239:6</p> <p>representatives 27:22</p>	<p>represented 143:21,23 143:25 217:20 233:3 233:11 238:3</p> <p>represents 31:8,17,20 97:22 101:8 107:14 108:1 187:16</p> <p>request 96:17</p> <p>requesting 74:16 141:8 215:6 221:24</p> <p>required 191:4</p> <p>requisition 63:24 168:3 168:7 169:7</p> <p>research 46:24 148:21 148:23</p> <p>reserving 129:10</p> <p>reservoir 184:20</p> <p>residential 5:10</p> <p>resolved 79:22 81:21 215:16 217:2</p> <p>resources 151:20 152:8</p> <p>respect 137:13 141:16 170:19 180:5 186:7 203:3 214:18</p> <p>respective 3:9,12,16</p> <p>respond 140:11,16</p> <p>responded 159:7</p> <p>response 215:7</p> <p>responsibilities 13:22 16:11 17:21</p> <p>responsibility 16:21</p> <p>responsible 11:2 14:9 14:10,14 15:20 16:18 17:23</p> <p>rest 128:21 240:7,7,10</p> <p>restaurant 78:7</p> <p>restaurants 79:5</p> <p>restricted 29:6,12,20 239:18</p> <p>result 57:12 119:21 157:6 158:23 159:13 224:12 236:4 242:4</p> <p>results 22:7 49:20 55:2 55:12 242:24</p> <p>retail 11:18</p> <p>retailer 55:24</p> <p>retrospect 212:4</p> <p>return 62:19 117:14 192:8</p> <p>returned 236:24 248:13</p> <p>returning 184:19 203:9</p> <p>reuse 66:17</p> <p>reusing 67:4</p> <p>reverification 103:7</p> <p>review 28:22 35:3 49:25 121:10,13 137:22</p> <p>reviewed 139:8 143:14</p> <p>re-rack 219:15</p> <p>re-smoking 19:9</p> <p>RF 47:4</p> <p>Rick 43:1,2,6 166:16 173:6,17 178:15 181:6 186:16 220:14</p> <p>rights 109:4</p> <p>right-hand 85:2</p> <p>risk 232:10,17</p>
--	---	---	---	--

<p>risked 137:7 risking 232:11 risks 62:2 road 133:20 221:12 r ast 16:5,5 44:19 48:11 60:6,7 roasted 13:4 45:23,24 149:21 roasting 13:1 21:12 r asts 149:21 R bert 66:12,13 69:14 73:25 74:15 145:14 146:3 186:22,22,23 191:7 206:20 Rodney 145:14,14 roll 191:24 Roman 75:13 104:16 182:17 room 157:13 roughly 102:11,25 r yalty 122:14 ruckus 137:25 run 35:5,7 38:24 39:2,5 39:5 49:16 59:11 65:17 66:1 73:4,8,9 73:14,19 87:22 91:19 94:20 107:24 108:3 198:8 199:21 200:6 201:23 203:24 207:7 209:1 220:17,17 running 64:24 65:2,6 65:14 70:17 79:25 88:5 223:7 RWO 32:12 33:9,14,16 47:4 50:21 163:4</p>	<p>10:23,25 12:9,10 17:5 17:6 sat 165:17 satisfaction 81:22 215:17 217:7 237:11 238:13 satisfied 218:18 219:18 235:13,15 238:23 save 10:4 51:15 55:18 65:11 67:7 131:7 savings 54:25 55:10,14 55:15 62:18 63:19 217:24 218:1,22 236:5,8 saw 105:13 115:2 119:9 192:3 saying 14:21 55:11 69:14 71:13 72:2 73:9 74:17 79:21 80:9 83:4 93:1 101:21 129:2 133:19 134:6 138:14 142:2 150:16 172:11 174:15 176:17 177:22,25 205:15 208:1 216:11 224:4 227:1,2 231:14 232:17 says 32:23 33:4 39:10 42:2,20 43:15 44:18 44:19,21 55:9 60:9 61:15 67:18 68:14 84:24 85:5,16 90:18 97:2,3,10,25 104:25 105:1,24 109:9,9 110:13 111:18,21,22 122:15 150:4 153:1 154:10,22 155:9 156:7 158:13 172:24 185:3 200:22 206:6 223:24 224:19 scale 219:17 Schlotzky's 79:6,7 school 6:4,14,22 78:9 scope 51:19 scrabbled 205:2 screen 184:18,21 screws 238:25 seal 247:8 248:18 second 33:25 34:11 48:11 50:24,25 53:16 57:21 63:4 64:23 71:9,10 74:22,24 75:5 87:12,21 97:8 103:24 120:13 124:5 125:5 138:1 139:18 141:17 143:8 212:19 seconds 37:23 71:14 156:10 182:24 184:22 secret 207:22 208:3,19 210:24 213:2 secretary 118:25 121:16 secrets 228:13,16 Sections 67:22 see 31:6 32:4,19 33:25 35:11 36:23 38:4 39:9 40:11 42:1</p>	<p>43:14 44:10,21 46:19 47:5,12 48:3 59:10 61:14,18 64:22 65:16 71:7 72:16,18,19 83:3 84:14 85:5,12,16,23 85:24 87:11 88:20 89:24 95:5 97:16 106:16 108:9 109:17 111:21 116:16 118:19 122:13 127:22 136:25 138:10,16 147:18,21 150:7 153:5,12 154:2 154:14,23 155:15 156:10 157:14 158:3 162:19 167:6,7 173:1 174:8 175:22,23 176:22 180:17 182:25 183:11 186:10 193:11 197:13,16 199:15,17 223:22 226:2 seeing 31:5 66:14 108:20 seemed 152:1 seems 124:1 seen 42:24 47:20 48:1,2 52:23 76:8 118:2,21 119:8,15 142:18 select 60:5 66:8 228:6 selectively 110:22 112:5 self-employed 126:8 sell 10:12 14:13 28:7 55:23,25 78:18,23 79:5 80:3 88:11 89:11 90:8,23 91:7,23 96:8 114:6 128:16 135:9 138:3,23 228:23 238:10 selling 23:2,6 28:14 40:22 41:11 166:21 188:10 sells 111:13 sense 114:24 191:12 sensory 35:6 sent 79:20 100:20 102:4 116:6 141:7 189:22 sentence 47:6 September 42:17 47:1 48:3 161:15 served 5:23,24 119:23 service 7:17 10:17,25 11:3,8,10 78:2,3,5 set 66:3 67:22 71:17 91:21 109:22 167:25 187:6 202:18,20 248:12 setting 17:23 71:6,13 91:16 105:7 settings 72:5 199:21 240:6 seven 188:24 several 12:14 19:11 39:16,18,18 52:16 146:11 180:8 229:23 shaken 114:23 115:6 shareholders 18:4</p>	<p>shaver 45:25 sheet 51:21 62:16 84:12 90:5 sheets 47:25 48:2 88:11 198:20 shelf 36:1,3,16 147:17 196:15 228:9 shift 20:5 84:7 86:15 87:11,12,17,21 88:6 ship 93:21 94:13,14 99:19 100:22 shipment 103:3 193:11 shipped 96:15,21 101:18,20 103:6,15 116:21 shipping 92:25 103:5 133:16 shocked 134:9 shop 138:19 173:21 shops 79:10 short 220:10 shorter 25:15 shortly 138:13 161:15 show 22:15,16,17,17 47:20 52:12,19 115:2 117:22 118:7,17 133:11 136:13 214:6 214:7 223:24 showed 136:11 167:1 shower 155:12 180:10 181:10 showering 181:8 182:3 showing 136:16 139:10 173:7,14 shown 135:19 136:9 166:4 226:7,23 shows 84:8 93:12,21 96:20,21,23,25 245:16 shrinkage 24:6 242:18 shrinking 111:2 112:13 shut 204:5 shy 99:1 sic 4:20 side 7:24 11:3 44:13 56:25 57:1 172:24 sides 28:17 sign 26:17 100:8 208:1 signed 3:17 25:20 29:23 179:25 208:21 209:13,14 211:6 214:5 significant 24:6 25:13 106:10 significantly 197:24 201:15 signs 223:25 similar 240:9 243:12 simplify 19:25 simply 56:16 73:21 118:6 since 33:13 50:1 106:6 110:11 170:12 180:13 237:15 single 77:2 sir 28:15 30:24 34:5,11 41:20 42:17 43:21</p>	<p>47:6 48:2,21 49:8 50:8 51:5 52:19 53:12 54:15,20 55:5 64:13 66:10 74:4 76:19 79:11 86:16 88:7 102:1 104:21 105:25 106:5 108:17 108:22 111:9 118:22 147:11 153:19 170:18 182:12 196:23 199:1 199:3 228:12 230:8 230:14 231:2 sit 81:24 143:11 166:15 198:24 230:11 231:2 231:21 sits 91:20 six 154:13 175:15 202:21 skinless 46:17 skip 62:17 skipped 79:14 168:23 slaughter 14:19 15:25 sliced 77:25,25 slick 138:5 slow 198:23 202:3 slowed 106:15 107:4 slower 242:2 slowly 241:19 small 78:20 188:11,11 smoke 12:16,22 23:21 32:1 35:23 37:13 43:19 44:11,13 45:1 47:5 48:25 58:25 64:6 66:17,22 67:4,18 69:11,12 72:10 84:25 86:2 105:7 142:19 149:6 151:9 152:17 155:9,15 160:3 168:14,18,24 169:15 172:25 173:3 175:6 175:12 177:3 180:10 180:12 181:3,24 182:3 184:15 185:1,4 185:10,12,16,23 195:2,13,17 196:10 201:19 207:9,12,15 225:5,15 228:6,6 243:12 smoked 12:11,18 44:17 45:25 46:2 48:19 49:14 58:4 77:3,12 84:13 229:13 smokehouse 12:16,22 23:20 smokes 44:23 243:18 smoking 20:7,7,23 23:13,17 58:25 149:7 152:11,15 164:18 177:20 194:15,17 201:6 snider 1:21 2:4 3:5 248:3 soaked 181:16 sold 24:10,16 51:21 76:7 80:14,22 81:25 82:9 84:18 89:21 91:13 92:19 94:5,6</p>
--	--	---	---	---

<p>98:1 105:20 109:21 112:17,23 113:9 144:7 201:7 206:22 212:10 235:6 246:1 solely 56:3,4 solids 184:19 solution 67:18 184:15 184:17 185:2,4,9,11 185:23 186:9 187:7 195:18 s me 16:3 22:16,18,18 24:21 26:22 31:5 46:13 51:23,24 54:11 54:12 56:14 61:6,7 62:13,18 68:22 70:2,3 72:24,25 79:21 80:16 81:10,13,14 88:4 120:14,15 121:2,7 122:18 125:7,7,16,16 126:3 127:19 129:23 129:24 131:12 135:20 139:5 142:7 146:9 149:11 157:6 160:13 163:25 167:18 198:21 201:21 203:2 206:8 206:23 207:1 209:16 215:3 216:18 219:10 232:21 237:8 241:1 somebody 27:17 33:19 61:24 115:1 150:13 167:11 191:17 207:2 209:1,22 237:13 somehow 130:3 someone 19:13 20:2 33:18 145:24 149:11 167:10 206:16 s mething 8:25 10:7 12:4 17:19 20:3 27:11,16,18 34:15 37:7,18 63:3 76:6 95:22 114:20 118:11 127:17 128:2 138:12 138:14 155:23 160:5 162:17,18,24,25 167:19 170:4,7 171:3 189:10 191:9 192:24 193:16 196:6 205:17 205:19 207:18 209:24 210:5 211:10,13,15 212:16 214:12 220:24 225:11 227:8 228:9 233:19 235:20 238:2 238:8 sometime 18:20 139:18 163:19 sometimes 30:14 165:12 205:14 somewhat 43:24 123:5 211:19 somewhere 17:17 51:25 115:3 144:21 148:9 161:14 211:11 soon 65:1,14 161:9 sorry 17:8 32:22 53:22 58:18 75:3,22 88:25 97:7 102:21 113:7 118:10 139:15 162:18</p>	<p>165:15 169:23 171:17 178:13 186:6,17 194:9 201:3 203:18 218:20 226:11 sort 61:6,7 139:5 216:18 sound 167:20 222:16 source 110:22 112:4 space 35:1 56:23 157:9 157:11 189:4,5 237:15,15 speak 11:22 18:19 113:16 131:8 140:25 229:9 speaking 51:9 spec 188:18 189:19 Specialties 68:24 69:3 69:10 183:22 Specialty 67:11 species 11:7 specific 176:5 235:22 specifically 41:16 specifications 70:23 189:20,21 specs 189:16,23 speed 35:1 42:12 84:10 200:12 201:17 240:6 240:20,23 241:2,15 speeds 198:9 216:19 spelling 4:21 spend 133:21,22 236:6 spending 132:16 spent 81:5 179:16 216:22 spice 102:9 splitting 128:19 spoke 21:14 115:23 spoken 4:20 142:3 145:21 235:17 spray 167:12 spring 133:15 144:20 Springfield 1:19 46:20 173:10 248:6 sprinkle 181:10 ss 248:2 SSP 44:21,25 St 126:1 stack 29:1 73:21 staff 17:25 stage 96:3 153:4 197:20 198:3 stages 189:7 stake 18:5 stamp 29:11 32:7 34:14 54:2 62:15,17 63:22 69:16 71:2 74:5 82:19 88:8 106:1 119:3 147:12 150:3 152:25 153:11 158:22 159:12 161:2 162:17 162:18 163:14,22 166:5 169:4,7,10,19 170:21 171:14 172:20 174:20 176:13 178:11 180:5 182:7,20 193:20 197:15 214:9 214:12 220:3 223:17</p>	<p>232:19 stamped 28:24 29:9,20 31:2 42:7 47:23 52:8 54:7 58:16 76:3 86:17 104:3 113:15 167:22 stamps 200:5 stance 227:6 stand 33:16 105:11 115:12 238:10 standards 62:5 68:18 215:21 standpoint 12:8,8 39:1 64:16 114:24 123:15 132:14 133:5,19 134:10 135:16 140:2 140:7 203:6 206:9 234:16 stands 47:7 stapled 30:25 44:3 69:17 121:3 star 39:10,11 start 30:22 started 7:21 138:2 149:9 151:17,23 167:5 172:20 173:12 220:12 Starting 105:3 start-up 80:16,16 state 1:20,23 5:5 6:1,5 27:6 56:14 185:22 247:9 248:1,4,6,19 stated 120:3 statement 176:16 statements 177:2 states 1:2,24 78:18 stats 72:15 status 64:17 70:1 stay 128:13 137:23 steam 154:22 182:21 182:24 stenographer 248:15 steno-mask 3:5 248:11 step 115:25 215:18 stick 145:25 sticking 23:8 still 7:6,6 43:9 62:1 63:15 65:5 81:25 82:9 129:20 140:21 140:24,25 142:4 148:6,9,13 193:3 215:3 219:13 233:21 233:22 236:11,12 stipulated 3:3,8,11,15 Stipulation 248:5 stir 84:24 stock 170:13 187:15 189:18 stop 78:15 114:3 stores 78:25 79:1,6,7 story 134:22 211:18 straight 204:24 strategic 17:24 Strauss 2:13 streamlined 171:1 Street 2:15 14:18,19,25 15:7,24 76:18 86:25</p>	<p>104:17,22 180:9 strengths 34:25 stripped 13:3 110:7 stripper 40:14,25 43:17 64:6 168:14,24 170:19 172:9,11 strong 215:24,25 student 9:7 stuff 220:14 Sub 79:10 subject 147:16 180:15 180:20 subjecting 24:4 Subjective 47:10 submerged 180:23 181:2 submitted 234:22,25 subpoena 4:7 5:14 18:10 28:19 119:22 119:24 120:3,4,10 subpoenas 5:24 subscribed 248:11 substance 61:3,7 126:23 substantial 245:18 substantially 111:2 112:12 131:17 substitute 185:1,12,15 succeed 232:2 successful 36:24 37:3 117:13 132:4 suffered 107:6 sufficient 110:25 112:10 sugar 59:24 sugars 194:25 195:8 196:6 suggest 88:22 suing 123:6 suit 248:17 Suite 2:6,15 summary 153:2,17 summer 19:1 144:21 superintendent 43:8 supermarket 11:13 78:1 supermarkets 11:9 supplied 48:6,7 supplier 135:12 support 176:17 supposed 120:21 210:15 suppression 216:1 220:4,11 221:13 sure 21:19 27:2 28:2 30:4 38:2 42:25 49:3 50:1,4,17 67:10 68:4 68:14,20,25 69:13 70:16 78:19 93:2 102:5 107:16 113:25 116:1 117:23 135:25 142:23 153:22 160:13 180:1 194:8 196:1 204:19 207:7 208:24 211:21 221:7 233:4 235:23 236:13 surface 24:4 105:6,17</p>	<p>110:14,18,21,23 111:1 112:2,4,8,12 157:25 192:9,25 193:2 203:10,12 224:2 surprised 123:5 139:22 139:23,24,25 140:20 140:22,23,24 SWIFT-ECKRICH 1:11 Swift-Eckridge 134:8 136:10 226:13 switched 77:4 161:19 174:10 sword 62:12 sworn 5:2 248:8 synopsis 44:7 syntax 212:16 system 19:25 39:8,15 40:15,22,25 41:1,3,4 41:7,12,19 72:9 87:9 87:16 91:13 92:19,19 104:23 105:5 107:20 113:10 132:2 133:8 136:22 137:4 153:2 153:18,25 158:8 169:25 171:24 172:2 176:19,22 177:13,16 177:17,19 178:1,8,9 180:21 181:23,25 184:13,22 192:8 211:9,20 216:1,7 220:5,7,11 221:14 222:15,18 228:24,24 239:25 240:3,8,8,10 240:13 243:5 244:1,5 244:12 systems 1:4 18:12 47:25 76:5 156:1 170:7 224:21</p>
--	--	--	---	---

T

T 3:2,2 4:5
table 218:5 229:9
take 4:7 5:19 8:17
13:13 19:16 20:19,19
35:3 47:22 49:9
50:17 62:1,15 80:15
106:20 119:16 138:10
151:7 159:16 163:15
193:14 209:8 218:4
225:4 232:10 233:19
236:14 237:17 244:12
taken 1:17 3:4,19 120:5
132:7 248:10
taker 74:2
takes 143:10
taking 12:20 31:12
57:6 181:12 216:2
232:16
talk 36:18 52:6 65:17
92:17 113:21 125:3
134:15 145:19 176:4
222:14 224:22 227:23
235:14
talked 19:11 23:16
94:17 101:7 107:5

114:1 120:1 121:14 122:17,17 127:9 130:20 134:18 135:3 137:16 138:13 139:7 140:21 145:24 180:2 218:2 226:17 228:12 233:25 234:1,2 talking 23:3 35:20 51:18 52:7 72:8 82:24 83:20 145:15 151:8 188:13 209:12 211:10 223:7,13 235:9,10,24 245:24 talks 68:5 69:25 203:9 232:21 Tanglewood 5:12 tank 43:19 64:7 155:13 168:15,18,25 169:15 172:10 taste 20:25 36:10 47:11 201:21 team 147:17 149:3,4 150:12,22 152:10 154:5,7,17,20 155:2,4 155:18 156:4,14 157:17,20 158:6,18 159:10 161:14 164:20 165:1,7 166:12 team's 164:7 technical 205:18 technician 179:1 technologies 26:23 43:11 125:23,24 151:24 technology 40:1 136:21 151:14 158:7 167:2 167:17 229:17 232:9 tecum 119:22,25 120:3 telephone 144:23 tell 30:2 46:16 54:13 60:13 63:14 64:12 80:4 86:23 102:5,15 102:16 103:5 114:5 123:21,22 134:1,7 139:2 141:11,13 149:2 184:1 191:18 209:1,19 212:21,24 224:3 telling 51:12 109:1 133:5 198:22 216:15 222:1 temperature 24:5 37:10 73:10 110:24 112:10 157:13,23 160:10 175:5,8,13 192:11,25 198:4,16 199:11,21 200:13 202:13,18 203:10,12 204:17 206:12 215:23 217:6 220:9 240:20 240:24 241:3,10,13 241:20,24 243:3 temperatures 37:8 50:15 67:20 68:5,6 71:12 73:13 160:6 187:8 192:9 197:11 197:18,22,24 198:8	198:11,23,25 199:16 201:8,14,16 202:4 231:4 240:5 242:2,3 tempering 157:9 tend 205:12,13 tended 73:18 tendency 35:21 terms 93:18 136:1 test 38:10 49:17,20,22 55:2,12 71:3 73:21 83:22 191:5 200:9,11 232:7,8 tested 47:12 49:10 188:4 testified 5:3 103:21 120:23 121:4 174:20 205:8 211:3 231:3 236:22 testify 120:8 248:8 testifying 91:4 testimony 90:24 163:13 163:18 200:1 230:1 242:1 testing 19:12 22:3,18 44:14,17 49:4,9 65:23 66:19 68:17,22 72:24 72:25 77:5 86:7 176:20 tests 35:6 44:8 47:14 64:25 74:1 82:25 162:11 200:6 Thanksgiving 20:18 their 9:9 15:21 22:7 49:25 62:13 91:25 93:20,20 96:17 105:14 109:3 115:10 145:25 158:9 159:20 165:2 175:25 187:15 187:16,20 224:24 227:6,10 232:16 themselves 115:4 theoretical 222:25 Theoretically 25:14 thin 188:13 thing 23:1 65:2 115:12 116:20 119:20 122:16 127:21 130:18 137:3 140:5,20 149:10 151:12 156:22 160:8 161:10 174:3 191:22 192:5 193:4 206:4 220:15,18 222:4 229:15 things 12:6 22:19 31:11 34:23 35:2 41:4 53:1 54:13 57:14 70:3 75:1,2 80:11 83:1 115:9 116:15 130:14 130:16 133:10 134:25 142:6 144:13 174:9 174:25 179:7,14 180:3 184:3 208:20 209:2 212:12 216:10 218:16 238:21 thing's 170:10 thinking 140:6 166:2 166:18 167:14 171:21	178:1 204:20 third 43:14 48:14 58:14 71:10,10,22 74:24 143:8 199:23,24 Thomas 42:10 147:21 147:23 148:10 149:23 153:7 163:21 242:23 Thompson 53:16 104:12 145:5,9 though 54:14 61:14 120:2 129:22 148:11 152:22 236:8 thought 29:10 50:5 114:21 140:4,10 145:8 167:3 170:24 173:8 200:2 thousand 23:4 83:21 172:15 188:24 216:22 thousands 245:25 246:4 three 7:13 11:6 12:1 14:20 43:12 71:24 115:1 116:22 117:6 141:7 152:24 157:11 189:7 215:11,13 220:2 224:20 236:7 236:10 three-percent 38:11 three-quarters 172:23 three-stage 187:5,22 188:5,7,8 190:16 191:10 thrilled 167:16 tie 38:22 tied 16:5 till 129:11 times 67:21 73:10 117:7 152:21 175:7,8 180:2 223:6 timetable 64:20 timing 152:1,7 tinkered 41:15 Tippens 2:5 title 16:11 53:2 67:10 titled 74:8 103:3 toast 38:1 today 5:13 16:9 18:9 73:20 81:24 82:12 83:10 87:24 90:24 116:16 119:10,14 122:3 141:3 142:24 198:13 200:2 230:12 231:2 233:2,10 235:16,17 236:22 245:11 together 10:12 16:12 34:5,16 49:15 50:6 51:24 52:1 66:20 69:18 100:20,22 115:5 116:17 120:24 121:5 131:17 136:23 149:19 152:16 157:3 157:5 176:8 187:1 211:9 told 19:14 22:6 26:25 63:7 114:11 117:11 124:23 134:21,22,25	137:20,21 138:8 139:6,9 140:8 144:24 144:25 145:12 146:13 146:14,17 175:18 189:24 201:22 207:20 209:17 218:25 226:6 226:22 tolerances 37:17 tones 105:10 Tony 43:9,10 46:21 49:13 50:1 55:3 125:17,21,23 145:3 146:15 149:24 150:4 150:16,19 151:7 161:6 166:15 191:7 Tony's 44:8 top 32:10,12,16,23 42:21 71:7,7,16 72:18 76:23 93:22 111:18 111:20 153:1 155:12 174:7 topic 146:5 tops 191:23 total 54:25 87:8 155:11 212:7 totally 68:14 114:25 241:13 touch 57:16 touched 56:17 tough 106:12 toward 47:7 190:5 towards 234:20 town 148:10 149:1 173:22 track 74:25 75:2 145:10 trade 115:2 117:22 118:7,17 214:6,7 228:12 trade-offs 237:20 training 70:25 traveling 154:13 treatment 225:15 tremendous 107:1 246:3 trial 3:13 4:13 47:25 129:12 tried 117:4,6,12 133:3 133:4,23 137:23 212:13,14 238:1 trip 69:21 82:22 tripping 220:5 234:2 trips 221:14 Truck 78:15 trucks 103:15 true 25:18,19 41:18,22 74:4 98:7 182:2 183:7 210:13 229:19 231:5,25 233:12 234:8,11,12 truly 238:4 trusts 228:15 truth 248:9 try 42:12,14 138:3 140:14,16 153:3 trying 10:4 17:18 28:6 28:6 44:22,24 69:13	73:1 84:9 107:7 127:14 130:24,25 132:12,20 133:17 137:3 138:19,20 165:20 166:18 175:2 185:5 204:23 232:7,7 tube 167:9,13 tubes 216:7 tune 69:5,6 174:25 175:3 tunnel 72:11 154:22 182:21,24 turkey 11:5,7 12:12 13:20,23 15:10,13,17 16:1,17 17:1 20:18 23:13 27:6,7 46:17 58:7,10 59:18 60:2,8 91:11 94:23 95:24 98:13,23 100:16 102:3 106:11,20 108:15 127:18 180:12 181:24 182:4 197:5,6 206:24 turn 147:12 150:1 167:21 172:19 174:2 174:19 176:12 177:6 178:11 199:16 223:16 224:17 turned 33:13 130:10 two 14:23 23:15 34:23 34:24 46:3 55:19 63:18 71:23 72:17 95:4,14 116:22 124:1 124:17 125:22 131:14 134:16,17 136:10 141:1 143:14,16 145:10 148:15 150:1 157:11 161:20 186:23 197:7 199:18 208:12 220:2,2 226:15 236:7 236:19 241:6 242:21 242:24 two-part 12:19 two-stage 187:21 188:4 188:6 189:7 TX 2:16 tying 57:3 type 3:5 11:1,14 14:13 16:6 20:4 45:1 229:14 241:1 typed 4:20 248:11 types 76:20 216:9 typewriting 3:7 typically 143:4,6 203:19 209:23 Tyson 16:13 17:14,15 17:16,16
--	--	---	--	---

U

U 3:2 47:23
Uh-huh 28:18 29:7
32:17,21 40:23 42:8
47:9,13,16 50:16
58:19 75:14 109:16
119:7 136:24 146:21
150:2 157:10 166:24
168:2,6 175:16 182:9

184:16 205:5 218:6 223:21 ultimate 111:13 ultra-secret 27:18 unaware 133:12 unclear 120:17 under 40:12,13 72:18 72:20 75:12 109:4 129:16 157:25 169:10 176:15 182:17 184:12 209:21 222:18 223:24 224:19 243:21 247:8 248:18 underlining 89:2 underneath 155:14 understand 21:19 49:12 58:15 95:8 107:17 128:14,15 161:24 167:21 187:16 203:8,18 205:3 207:11 213:6 240:18 understanding 164:14 206:9 210:14 understood 211:21 235:23 under-designed 222:19 223:4 unfair 128:2 Unfortunately 159:6 uniform 110:15 unique 170:16 179:14 191:9,12 192:2 uniquely 59:9 uniqueness 179:11 united 1:2,24 Unitherm's 59:12 160:3,22 169:15 231:25 234:25 units 84:5 224:22 University 6:6 78:10 unknown 238:21 Unless 120:22 unresolved 215:3 unsatisfactory 236:24 until 23:10 108:4 119:13 127:9 142:16 untried 211:20 UO5587 47:23 updates 147:18 upgrade 188:17 189:2 220:16 upset 115:6 USDA 66:20 67:1 68:17 74:16 182:11 185:22 200:16 use 23:14 44:12 45:8 57:24 67:18 74:18 77:23 96:10 106:22 133:18 152:17,17 158:8 160:25 162:7 171:12 173:9 177:3 195:19 197:17 237:18 used 21:3 36:11 40:8 41:20 99:20 135:25 160:4 180:11 181:23 194:6,18,23 207:9 239:25	useful 228:4 user 111:14 uses 111:12 195:5 using 20:12 23:15,22 44:10 55:17,17 56:7 68:8 75:18,19 83:14 84:13,17 87:15 91:12 92:3 105:16 114:4 130:13 151:13 156:17 160:21,22 165:12 174:6,12,13 185:18 190:22 198:5 199:10 201:5,7 207:15 233:21,22 243:5,12 243:19,22 245:10,11 245:13 usually 145:23 146:1 209:2 utilize 45:12 110:3 112:24 utilized 66:22 75:16 240:3 utilizing 87:1 U-05590 47:24 U.S. 109:12 V vacuum 193:10 valid 27:3 29:18 validity 204:7,13 Valley 6:5 variability 203:2 variable 242:19 variables 241:7 vary 240:23 vein 142:5 velocity 160:2 191:20 216:18 vendor 209:22 versus 15:13 24:15 240:23 244:16 very 17:1 52:12 70:25 81:14 112:5 114:2,23 114:23 128:9 133:24 135:7 142:1,2 153:1 161:19 165:14 189:14 199:16 210:7 219:23 235:21,22,22,22 237:2 Vice-President 118:24 viewpoint 229:23 virtually 10:19 visibility 81:4 visits 104:19 visualize 153:4 volume 215:22 234:7,7 234:24 volumes 72:14 235:4 vs 1:9 W W 2:10 wait 71:3 221:22,23 waived 3:10 walk 11:14 wall 26:22 28:12 31:23 31:24,25 32:5,15,16	32:23 33:1,6,7,17,22 34:18,22 35:15,19 36:23 37:6,23 38:18 39:15,24 40:12 44:9 147:17 149:3,4,9,15 150:21 152:9,12 153:12,21 154:4,7,12 154:16,19 155:1,4,17 155:25 156:4,13,20 157:1,16,19 158:5,17 158:20 159:10,11,18 159:24 161:14 162:11 164:7,20 165:1,7 167:16 170:8 174:7 174:12 232:6 wall's 38:5 want 9:24 10:6,6 30:15 59:11 66:16 70:22 71:1 80:11 91:11 93:2 115:13 117:25 130:22 132:15 133:24 144:18,19 164:1 165:15 175:11,17,20 175:22,23 178:3,5,6 181:17,17 188:6 205:12,22 206:10 210:6 217:14 227:20 235:16 242:6 wanted 9:8 31:17 45:8 45:11 53:6 60:19,21 61:19 64:25 65:1,2,13 72:13 73:8,13 80:3,4 81:16,20 106:21 125:6 128:12,13,16 128:17 132:19 135:18 136:1 170:15 176:5 180:1 198:8,9 211:4 211:20 222:9 234:24 wanting 122:24 wants 135:9 wasn't 36:8,13 50:2 51:19 52:1 63:19 81:1 125:11 128:6 129:4 135:14 137:2 140:23 167:15 190:8 190:9 211:12 215:24 215:25 216:4 217:19 217:24 218:17 224:7 227:7,9,13 229:10 235:15 244:11 water 167:12 way 19:8 20:5 21:22 22:14 39:9 52:17,24 56:14 60:22 62:16 76:11 102:21 104:18 106:2 117:24 126:19 126:25 127:1 129:10 130:18 133:8 136:25 142:13 159:6,7,9 160:17 161:18 164:6 165:25 166:22 172:24 173:8,13,19 178:2 207:25 209:6 217:11 221:16 229:13 237:10 ways 12:14 19:20 23:15 44:12 WB 32:7	WB00000 28:24 WB000110 86:10,12 WB1 31:2 WB14 147:13 Wednesday 1:17 weekday 86:14 weekly 51:11 weeks 65:24 141:7 146:11 148:15 161:21 week's 176:20 weight 38:12,13 55:21 55:22,23 72:1,2 189:2 196:21 215:22 220:9 222:19 223:1 weight's 190:2 Weiner 19:19 69:22,22 70:15 104:7,8,9 125:20,20 126:5,6 145:3 146:16 149:18 149:18,23 160:15 167:1 176:10,17 177:7 183:22 186:16 223:19 Weiner's 82:22 198:20 200:3 welcome 145:19 well 9:24 10:10 17:13 27:15 29:2 37:20 41:8 45:19 46:13 49:13 56:25 63:4 84:21 110:12 114:5 114:18,19 115:8 116:9 120:11 123:11 128:21 130:12 136:13 139:24 146:8 165:14 172:6,11 187:14 196:3 206:11 208:8 209:5 216:24 219:17 221:7,16 230:9 239:18 went 6:3,4,13,21 7:5,15 8:21 20:3 22:2 25:4 33:18 36:1,16 50:20 73:25 79:14 80:14 81:6 85:11,19,20 97:20,23,23 102:10 103:10,11,13,16 122:21 125:13 126:19 127:1 130:8 132:8 136:7,15 151:10 181:2 189:7 203:16 216:4 241:22 weren't 10:16 52:13 190:7 West 6:3 western 1:3,25 we'll 9:2 54:1 101:14 128:25 137:10 173:15 212:18 we're 18:9 35:20 50:18 64:1,1 66:24 74:18,25 75:2 83:10,20 92:15 122:15 128:7,9 129:1 135:5 144:5 165:20 166:1,6,17,18 174:11 188:13,23 223:7 237:16,20 245:24	we've 29:5 92:9 101:4,5 101:7 116:14 120:22 137:12 174:10 205:3 220:17 222:2,3 237:17 while 17:15 73:22 white 48:19 whole 24:2 27:7 41:21 46:1,4,7,9 58:7,11 59:20 60:1,8 77:19 84:22 85:14 94:23 95:2,3 98:12,22 99:7 102:3 108:15 109:14 110:16,18,23 111:3 111:24 112:2,9,13 176:11 196:22 199:15 207:14 211:9 242:8 242:14 248:8 wholesomeness 68:18 wife 209:7 willow 1:18 2:12 16:16 17:22 93:4 111:10 239:20 240:1 245:8,9 248:5 wish 212:4 witness 3:10,17 25:21 32:25 33:3 86:11 88:24 237:3 248:12 wood 59:4,5 woods 132:21 word 35:5 68:15,15 123:7 142:16 181:3,4 195:9,11,18 words 25:7 55:21 62:6 166:4 234:20 work 7:2,5 13:18 22:13 26:18,20,25 52:3 127:15 136:23 138:21 146:20,25 153:3,18 167:3 171:22 172:12 178:21 191:21 208:25 209:18 219:8,9 229:17 232:15 234:18 234:19 236:3 worked 6:21 7:8 8:5,11 9:20 50:3 53:3,5 106:6 149:19 175:7 178:23 233:1,10,15 working 6:13,15 9:19 17:25 19:7 34:24 69:23 70:18 81:10 105:8,21 123:1 127:6 128:17 148:22 170:25 176:8 222:16 237:22 239:5 works 43:6,8,10 233:16 234:16 world 118:19 128:1 worried 167:10 207:24 213:9 worry 123:18 worse 36:15,15 worth 83:21 236:8 238:24 wouldn't 62:8 81:18 83:22 145:9 160:11 174:15 191:21 205:7
---	---	--	--	---

229:8 235:14 wrapped 132:15 write 70:22 writing 83:3 88:22 163:5 208:13,14,15 wrong 25:8 44:16 60:13 189:15 192:1 206:8 208:7 wrote 54:12 214:20 Wynn 78:24	000114 92:23 000118 99:15 101:7 000121 104:4 000129 106:1 108:18 113:15 000136 29:1 107:11 01 151:14 06/05/05 248:21	169:5,11,19 170:21 171:14 223:20 18th 83:8 18-p und 95:20 1876 76:12 1877 76:6 1878 76:12 1879 76:12 188-15 4:3 1880 76:12 19 42:14 43:25 44:4 54:5,7 104:6 19th 47:1 161:16,20 1937 5:12 1959 6:10 1981 6:20 8:12 1984 6:13 7:14 8:12 10:18 1986 13:9,10 1987 8:8 1990's 106:9 1993 8:3 10:19 13:15 14:7 17:2,10 243:23 1995 16:21 1996 18:21 19:1 26:9 42:18 47:1 53:9 67:13 136:14 150:23 162:6 163:16,20 164:5 168:8 178:15 210:2 1997 70:11 74:6 86:15 93:13,22 97:24 98:4 101:24 104:6 107:22 108:5,7,8 118:1,13 182:14 199:6 200:4 200:16 201:7 202:11 214:23 223:20 245:8 245:14,20 246:2 1998 16:15 107:24 1999 16:12 17:3,10	26 44:4 27 54:1 178:14 28 42:7,11,16 86:15 150:23 163:20 28th 71:5 108:25 113:14 164:5 29 93:12 29th 89:14 168:8 29-3 4:11	224:8 50-12 4:13 500 211:12 231:9 50004 89:25 50044 45:18,20 46:4 58:1 63:15 66:7 95:6 98:8,10 108:10 50044's 103:19 50075 85:9 50076 46:10 60:4 50082 59:23 50086 59:16 50088 87:4 50302 88:20,20,20 50304 85:8,24 87:7 88:19,19,20 94:19 97:2 50304's 97:22 98:25 99:6 50304-01 97:3 5034 88:17 5076 48:13 5088 88:13,13 51002 45:15 46:1 48:19 510044 77:15 52 178:12 180:5 52-22 4:15 53 70:5 199:14 200:5 5400 95:21 550 71:22 199:23,24 5500 95:22,23 55144 45:25 46:7 570 199:18,22 572 72:19 57934 58:12 63:17 85:7 85:16 87:7	
X X 4:1,5	1 1 4:6 28:25 111:23 182:14 223:24 1.36 72:4 1.9 72:4 1/17/97 4:17 1/8-inch 184:18 1:15 121:17 1:30 119:9 121:23 122:3 1:45 1:18 10 31:3 93:18,18,19 121:15 155:11 157:23 202:2 219:17,17 223:6 10-cent 122:14 100 2:6 10:20 198:11 212:8 238:12 100-16 4:2 102 79:15,15 214:13,15 103 214:9,16,18 220:4 104 79:11,13,16 106 82:19 223:17 232:19,19 108 224:17 11 32:7 161:25 162:6 162:17 11th 245:8,14,20 246:1 1115 99:25 1150 156:9 116 96:18 118-20 4:19 118-5 4:17 12 34:14 52:8 102:9 155:11 162:19 163:15 12th 48:4 12,000 99:2 1200 37:8 156:9 13 32:9 13th 42:18 104:19 13,904 102:12 14 163:22 15 150:4 157:23 15th 82:23 101:24 104:19 150 14:11 1500 2:15 188:21 16 152:25 157:24 160 192:25 1600 35:20 37:9,24 167:9,19 17 1:17 118:13 17th 118:1 17,652 87:7 1700 2:6 17652 88:17 18 153:11 158:22 159:12 161:2 166:5	2 2 4:8 217:22,23 220:3 222:21 2.1 217:25 2.4 217:25 2.540 95:9 20 50:25 143:6 214:3,4 242:20,24 20th 6:10 20,000 83:4,19 20-gallon 155:13 20:46:53 103:12 200 231:16 2000 29:23 118:22 119:12 132:17 239:22 2001 1:18 139:19,20 247:10 248:20 202-16 4:4 202-24 4:5 22 83:5,7,19 237-4 4:3 239-15 4:4 24,230 87:4 88:14 25th 32:19 34:3 74:6 162:6,25 163:16 250 231:13	3 3 4:10 217:22,23 222:14,21 30 200:4 30th 53:9 70:11 88:2 300 2:15 72:20 95:5,15 95:16,17,18 102:5 300,000 172:16 304 71:4 304's 94:20 102:11 318.17 67:23 318.23 67:23 33 54:16 350 2:10 50:10 72:21 36 58:17 3610 85:10 38 62:17 381.150 67:23	4 4 4:24 4/28/97 84:6 86:4 4/29 90:7 97:15,21 40 62:15 63:23 83:20 154:1 157:25 158:1 168:1 169:8 192:12 192:20 202:16,23 203:20 219:16 223:10 224:9 400 97:5,22 102:10,17 198:13 405 1:19 248:5 41 64:10 42 167:23 172:20 44 48:14 77:16,16,18 174:20,20 44's 77:1,17 94:16,19 98:25 102:6 45 156:10 174:21 221:5 45,290 87:8 450 102:11 46 174:21 48 69:16 176:13	6 6 4:16 6th 93:22 97:24 98:4 101:16 6-3 4:7,9 6/15/96 163:8 6/23/97 89:7,12,17 90:8 90:23 91:8 97:11 6/25/96 33:10 163:4 60 71:2 172:15 182:24 184:22 600 71:17 187:9 197:12 197:19,22 199:5,12 199:20 200:19,24 201:9,11,24 231:5,15 231:21 600-degree 61:23 611560 93:15 62 72:17 620 223:13 623's 98:17 62497 98:14 63 44:22 85:25 6342 85:8,24 6408 87:7 650 71:21 231:9 670 72:21 187:9 197:12 197:19,22 199:12,18 199:22,22 200:19,25 201:9,11,24 231:15
Y year 7:7 89:14 132:18 139:11,19 144:9 years 7:13,19 12:1 106:13 107:6 110:10 115:1 116:23 121:22 131:14,15 136:10,10 143:7 151:10 152:5 214:2,3,4 yield 24:22 38:4,7 55:10,13,15 56:4,16 62:19 72:4 73:4 242:22 yields 25:9	Z zero 10:20 zeros 28:25 147:13 zone 71:10,10,11,16,21 71:22 199:17,24,25 224:20 zones 224:23	S \$13,405.82 102:6 \$2 65:10 95:13 \$2,426,768 55:13 \$2.4 55:19 \$2.54 95:10 96:1 \$25,000 102:25 \$33,629.94 101:23 \$40,000 83:20 \$45,000 220:25 221:3 \$457.61 102:10 \$500,000 23:7 \$800,000 236:6	# #1 5:18 #2 5:21 #3 28:21 120:15 #4 50:9 #5 52:21 53:25 #6 118:5 #7 118:20	0 000111 86:18 90:13,25 97:18 000112 87:11 000113 88:8 89:13 91:2 97:13	

Holliday Reporting Service

231:22				
<u>7</u>				
7 4:18 214:23				
7th 29:23 218:24				
221:15 239:22				
7/64-inch 184:20				
7/8/00 4:19				
7000 110:10				
73102-8820 2:7				
750 216:22				
76 45:22				
78205 2:16				
79 70:6 200:5				
<u>8</u>				
8 224:19				
8th 79:12 118:22				
119:12				
8,492 85:7				
8/28 161:18				
8/29 161:12				
8:00 1:18				
80 74:5 218:4				
80's 106:23,24,25 107:9				
800 216:22 231:17				
82's 77:1,9,10				
84's 77:1,10				
8492 85:20				
86's 77:2,11				
8600 158:14,14				
87 13:10 74:5				
88's 94:17,20 98:16,25				
102:9 103:22				
888's 90:11				
<u>9</u>				
9/23 62:25 63:1				
9/23/1996 55:7				
9/24/96 62:23				
90 71:6,14 102:11				
90's 106:12 107:5				
900 217:4 223:5				
9000 223:8				
91105 2:11				
92 74:12				
93 182:7,20 193:20				
197:15 229:21 230:14				
242:12				
95 106:9				
96 21:13 32:20 34:4,6				
48:4 106:9 162:25				
97 38:6 71:5 76:3 89:15				
104:19 107:25 108:1				
128:11 133:16				
98 38:6				